TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 158.

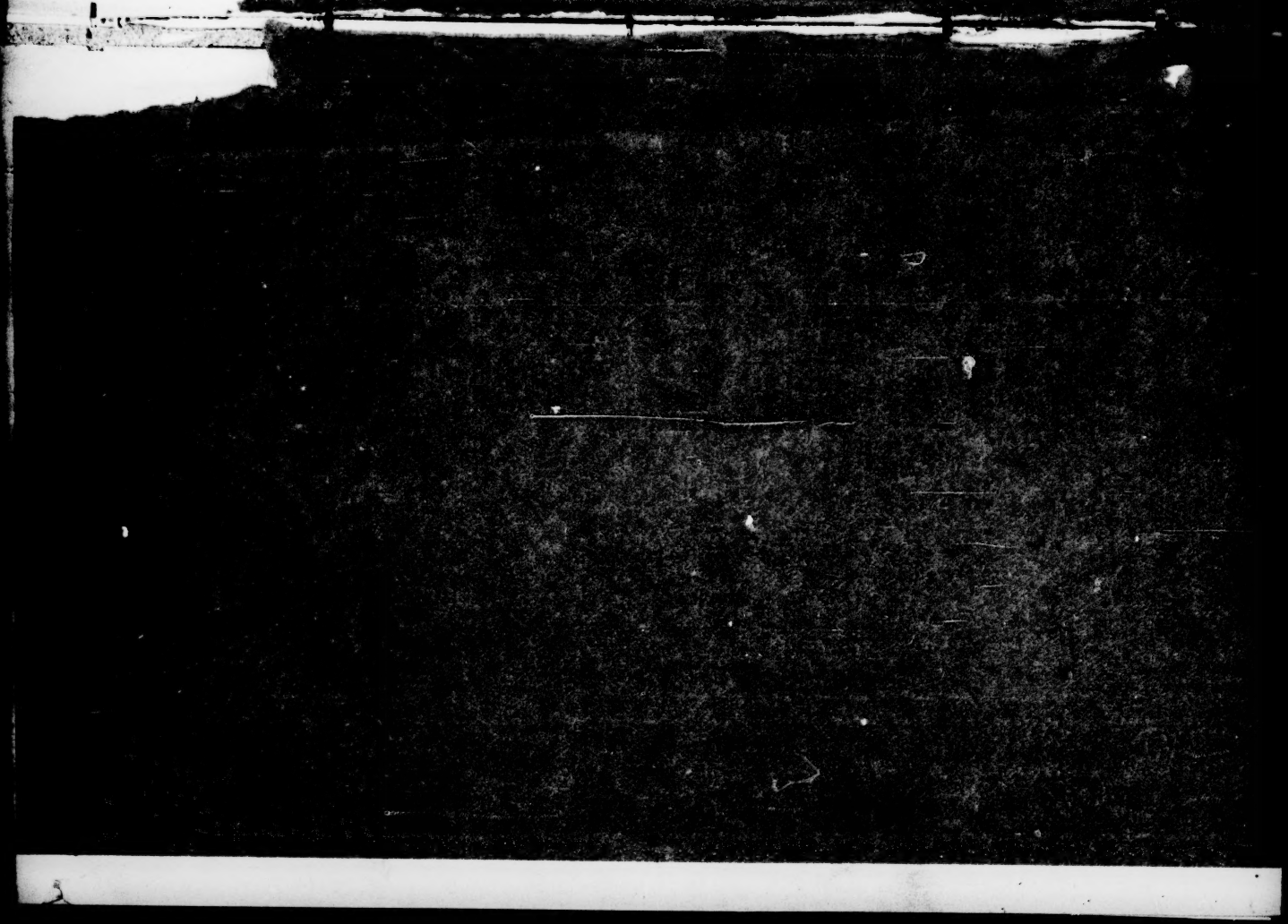
PEDRO CHABOYA, SALVADOR CHABOYA, ET AL., PLAINTIFFS IN ERROR,

vs.

DAVID UMBARGER, DENNIS LEAHY, WILLIAM SWALL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 6, 1875.



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a In the Supreme Court of the United States.

PEDRO CHABOYA ET AL., PLAINTIFFS IN ERROR,
vs.
DAVID UMBARGER ET AL., DEFENDANTS IN error.

Know all men by these presents that we, Joseph Sedgley and Charles Lux, are held and firmly bound unto David Umbarger, Dennis Leahy, William Swall, Peter Swall, Milus Gay, and Samuel McGinnis, in the sum of thirty-five hundred (3,500) dollars, to be paid to the said David Umbarger, Dennis Leahy, William Swall, Peter Swall, Milus Gay, and Samuel McGinnis, or their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals. Dated this 29th day of March, A. D. 1875.

b Whereas the above-named Pedro Chaboya and Salvador Chaboya, José Jesus Chaboya, Alexandro Chaboya, Maria Chaboya de Narvaez, Teresa Chaboya, Sexto Chaboya, Frujencio Chaboya, Luisa Chaboya, Leonardo Chaboya, and Josefa Chaboya de Narvaez have presented a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the above-entitled action by the supreme court of the State of California:

Now, therefore, the condition of this obligation is such that if the above-named Pedro Chaboya, José Jesus Chaboya, Alexandro Chaboya, Maria Chaboya de Narvaez, Teresa Chaboya, Sexto Chaboya, Frujencio Chaboya, Luisa Chaboya, Leonardo Chaboya, and Josefa Chaboya de Narvaez shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOSEPH SEDGLEY.
CHA'S LUX.

Signed, sealed, and delivered in presence of—

UNITED STATES OF AMERICA,
District and State of California:

c Joseph Sedgley and Charles Lux, being duly sworn, each for himself, deposes and says that he is a householder in said district and State, and is worth the sum of thirty-five hundred dollars, exclusive of property exempt from execution, and over and above all his debts and liabilities.

JOS. SEDGLEY.
CHA'S LUX.

Subscribed and sworn to before me this 29th day of March, A. D. 1875.

[SEAL.] BERT. M'NULTY,
Deputy County Clerk, City and County of San Francisco.

I approve the foregoing bond as to its amount and form and the sufficiency of the sureties thereon.

W. T. WALLACE,
Chief-Justice of the Supreme Court of the State of California.

Writ of error.—Filed March 29th, 1875.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, greeting:

d Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between Pedro Chaboya, Salvador Chaboya, José Jesus Chaboya, Alejandro Chaboya, Miria Chaboya de Narvaez, Teresa Chaboya, Sixto Chaboya, Fulgencio Chaboya, Luisa Chaboya, Leonardo Chaboya, and Josefa Chaboya de Narvaez, plaintiffs in error, and David Umbarger, Dennis Leahy, William Swall, Peter Swall, Milus Gay, and Samuel McGinnis, defendants in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said United States Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Supreme Court may cause further to be done therein to correct that error
1 what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 29th day of March, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O. BEIRNE,
Deputy Clerk.

The above writ of error is hereby allowed.

W'M T. WALLACE,
Chief-Justice of the Supreme Court of the State of California.

Citation.—Filed March 29th, 1875.

UNITED STATES OF AMERICA, *ss:*

To David Umbarger, Dennis Leahy, William Swall, Peter Swall, Milus Gay, and Samuel McGinnis, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America to be held at the city of
2 Washington, in the District of Columbia, on the second Monday of October, A. D. 1875, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Pedro Chaboya, Salvador Chaboya, José Jesus Chaboya, Alejandro Chaboya, Maria Chaboya de Narvaez, Teresa Chaboya, Sixto Chaboya, Fulgencio Chaboya, Luisa Chaboya, Leonardo Chaboya, and Josefa Chaboya de Narvaez are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ

of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this 29th day of March, A. D. 1875, and of the Independence of the United States the ninety-ninth.

W'M T. WALLACE,
Chief Justice of the Supreme Court of the State of California.

Copy delivered to me this 29th March, 1875.

W'M MATTHEWS,
Att'y for Pl'ffs, Def'ts in Error.
THO'S BODLEY,
Att'y for Pl'ffs, Def'ts in Error.

3 No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.

In the district court of the third judicial district of the State of California in and for the county of Santa Clara.

DAVID UMBARGER, DENNIS LEAHY, WILLIAM Swall, Peter Swall, Milus Gay, and Samuel McGinnis, plaintiffs,
v.
PEDRO CHABOYA, SALVADOR CHABOYA, JOSÉ Jesus Chaboya, Alejandro Chaboya, Marilla Chaboya de Narvais, Teresa Chaboya, Sixto Chaboya, Flujencio Chaboya, Luisa Chaboya, Leonardo Chaboya, Josefa Chaboya de Narvaez, John Doe, Richard Roe, John Stiles, and Richard Stiles, defendants.

Complaint.

The above-named plaintiffs, David Umbarger, Dennis Leahy, William Swall, Peter Swall, Milus Gay, and Samuel McGinnis, complain of
4 Pedro Chaboya, Salvador Chaboyo, José Jesus Chaboya, Alejandro Chaboya, Marilla Chaboya de Narvaez, Teresa Chaboya, Sixto Chaboya, Flujencio Chaboya, Luisa Chaboya, Leonardo Chaboya, Josefa Chaboya de Narvaez, who are sued by their true names, and John Doe, Richard Roe, John Stiles, and Richard Stiles, whose true names are unknown to the plaintiffs, and who are therefore sued by fictitious names, (and whose true names the plaintiffs ask may be inserted when the same are discovered,) and for cause of complaint aver that heretofore, viz, on the first day of January, A. D. 1866, the above plaintiffs were and ever since have been and still are owners in fee as tenants in common of the undivided one-third of all that certain tract or parcel of land situate, lying, and being in the county of Santa Clara, in the State of California, laid down and numbered on the map of what are commonly designated and called the five-hundred acre lots of the former Pueblo de San José de Guadalupe as lot six (6) east of the base line, and abutting on the north on the lands now in the occupation of one Dubois, on the west by the main road to Monterey, on the east by a public road leading to the Rancho Yerba Buena, and on the south by a tract of lands formerly claimed by one William Daniels; and that thereafter, viz, on the 2d

day of January, A. D. 1866, the said plaintiffs still being the own-
5 ers of the said premises, the said defendants, and each of them, unlawfully entered upon and took possession of the said tract of land, and from the day and year last aforesaid have remained in the possession of the same and of every part and parcel thereof, excluding the said plaintiffs, and each of them, therefrom, and from every part thereof, and still continues so to do.

Wherefore the plaintiffs pray that they may have judgment against the said defendants, and each of them, for the said premises and tract of land and costs of suit.

W'M MATHEWS AND
THO'S BODLEY,
Attorneys for Plaintiffs.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

David Umbarger, being first duly sworn, on his oath says that he is one of the plaintiffs in the above-entitled action; that he has heard the foregoing complaint read, and knows the contents thereof; that the same is true of his own knowledge, except to the matters and things therein stated to be on his information or belief, and that as to those matters he believes it to be true.

DAVID UMBARGER.

Subscribed and sworn to before me this 20th day of December, A. D. 1866.

A. E. POMEROY, *Clerk.*

6 (Indorsed:) Filed December 20th, 1866. A. E. Pomeroy, clerk, by Cha's Silent, deputy.

Answer.

(Title of court and cause.)

Now come the defendants, Salvador Chaboya, Pedro Chaboya, José Jesus Chaboya, Alejandro Chaboya, Maria Chaboya de Narvaez, (sued as Marilla Chaboya de Narvaez,) Teresa Chaboya, Sixto Chaboya, Fuljencio Chaboya, Luisa Chaboya, Leonardo Chaboya, and Josefa Chaboya de Narvaez, and answering the complaint of plaintiffs, deny that the plaintiffs or either of them were, on the first day of January, A. D. 1866, or at any other time either before or after said day, the owners in fee or in any other manner of the undivided third part or of any other part of the lands and tenements described in the complaint. And they deny that the plaintiffs or either of them were at the commencement of this suit the owner in fee or in any other manner of any estate, right, title, or interest in the lands and tenements described in the complaint or in any part thereof.

And for a further answer the said defendants say that the plaintiffs ought not to have or maintain this action against these defendants,
7 because the said defendants aver and show to the court the truth to be that neither of the plaintiffs, nor any of their ancestors, predecessors, or grantors have been seized or possessed of the premises described in the complaint or any part thereof within five years next before the commencement of this action.

And for a further answer defendants deny that they or either of them ever at any time have ousted the plaintiffs from the lands and tenements described in the complaint or any part thereof.

And for a further defense the defendants, Salvador Chaboya, José Jesus Chaboya, Alejandro Chaboya, Maria Chaboya de Narvaez, Teresa Chaboya, Sixto Chaboya, Fuljencio Chaboya, Leonardo Chaboya, Luisa Chaboya, and Josefa Chaboya de Narvaez say that the plaintiffs ought not to further have or maintain this action against them, because they aver and show to the court the truth to be that since the commencement of this action, to wit, on the 27th day of December, A. D. 1866, they became the owners in fee-simple and rightfully in the possession and still are the owners in fee-simple and rightfully in the possession of all the lands and tenements described in the complaint; and this they are ready to verify.

PECKHAM & PAYNE,
Attorneys for Defendants.

8 STATE OF CALIFORNIA,
County of Santa Clara, ss:

Fuljencio Chaboya, being duly sworn, deposes and says that he is one of the defendants who unites in the preceding answer; that he has heard said answer read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief; and as to those matters he verily believes it to be true.

FULJENCIO CHAVOYA.

Subscribed and sworn to before me this 12th January, 1867.
A. E. POMEROY, *Clerk*,
Per CHA'S SILENT, *Deputy.*

Copy of within answer duly served on us this 14th day of January, 1867.

THO'S BODLEY,
W'M MATHEWS,
Attorneys for Plaintiffs.

(Indorsed:) Filed January 12th, 1867. A. E. Pomeroy, clerk, per Cha's Silent, deputy.

Verdict of jury.

We, the jury, find for the plaintiffs.

A. L. BOGGS, *Foreman.*

SAN JOSÉ, *September 16th*, 1869.

9 (Indorsed:) Filed September 16th, 1869. Jno. B. Hewson, clerk.

Judgment.

(Title of court and cause.)

This action came on regularly for trial. The said parties appeared by attorneys. A jury of twelve persons was regularly impaneled and sworn to try said action. Witnesses on the part of plaintiffs and defendants were sworn and examined. After hearing evidence, the argument of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and being called, answered to their names, and say they find a verdict for the plaintiffs, as follows: "We, the jury, find for plaintiffs. A. L. Boggs, foreman. San José, September 16th, 1869."

Wherefore, by reason of the law and the verdict aforesaid, it is ordered, adjudged, and decreed, that the plaintiffs, David Umbarger, Dennis Leahy, W'm Swall, Peter Swall, Milus Gay, and Samuel McGinnis, do have and recover of and from the defendants the possession of the following tract of land described in said complaint, as follows. Situate, lying, and being in the county of Santa Clara, and State of
10 California, laid down and numbered on the map of what are commonly designated and called the five-hundred-acre lots of the former Pueblo de San José de Guadalupe as lot six (6) east of the base line, and abutting on the north on the lands now in the occupation of one Dubois, on the west by the main road to Monterey, on the east by a public road leading to the Rancho Yerba Buena, and on the south by a tract of land formerly claimed by one William Daniels.

Judgment rendered September 16th, 1869.

JNO. B. HEWSON, *Clerk*,
By L. F. EASTIN, *Deputy*.

Clerk's office of the district court of the third judicial district in and for Santa Clara County, ss.

I, Jno. B. Hewson, clerk of the said court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause.

Attest my hand and seal of said court this 16th day of September, A. D. 1869.

[SEAL.]

JNO. B. HEWSON, *Clerk*,
By L. F. EASTIN, *Deputy Clerk*.

Settled and engrossed statement on motion for a new trial.

This cause came on to be tried at the September term of said court for the year 1869, to wit, on the 14th day of September, 1869, before a jury, when the following proceedings were had:

11 A stipulation setting forth certain facts agreed upon by the parties, filed January 12th, 1869, was read to the jury, said stipulation being as follows:

Stipulation as to facts agreed upon.

In the third judicial district court of the State of California in and for the county of Santa Clara.

DAVID UMBARGER ET ALS., PLAINTIFFS,
v.
PEDRO CHABOYA ET ALS., DEFENDANTS.

The parties plaintiffs and defendants hereby stipulate and agree upon the following facts, for the purpose of evidence on the trial of the above-entitled cause, reserving to each and every of the parties all objections to the admissibility of proof of each and every of such facts which may legally be made.

I.

That Pedro Chaboya, on the 2d day of March, A. D. 1853, filed before the United States board of commissioners to ascertain and settle private land-claims, organized under an act of Congress to ascertain and settle private land-claims in California, the petition a copy of which is as follows:

Petition of Pedro Chaboya.

To the United States land commissioners for ascertaining and settling private land-claims in California.

12 The petition of Pedro Chaboya respectfully showeth to your hon. board that on the 23d day of March, 1844, he made and presented his petition in writing to the governor of California, soliciting for himself the grant of a tract of land situated in the present county of Santa Clara, a description of which will be given hereafter; and that such petition was referred to the minister of San José and to the respective alcaldes for further information.

That your petitioner on the 3d of December, 1845, presented a new petition for the same tract of land, and prayed for a final conclusion of the subject; whereupon it was referred once more to the subprefect for further information.

That on the 10th of December, 1845, and on the 14th of February, 1846, the reports were returned to the government in favor of your petitioner; but that your petitioner, in consequence of the occupation of this country by the American troops, and in consequence of the removal of the Mexican authorities, could not succeed in obtaining a formal grant.

And your petitioner further states that said land is situate in the present county of Santa Clara, is of the extent of two Spanish square leagues, and bounded as follows: On the north by the lands of José de Jesus Vallejo; on the east by the rancho of Antonio Suñol and the
13 road from San José to the valley; on the south by the Cañada del Aliso Colindante con Don Flujencia Higuera, and on the west by the estuary.

And your petitioner further states that he has been in the quiet and peaceable possession of said land from the year 1840 up to this day, and is not aware of the existence of any title conflicting with or superior to his own.

Submitting all the documents of the proceedings taken in this case, he prays that your hon. board will confirm and validate his claim and title thereto.

CLARK, TAYLOR & BECK,
Attorneys for Claimant.

II.

On the same day the said Pedro Chaboya filed with his said petition, and in support thereof a genuine document in the Spanish language, the following which is a translation:

Translation of document filed in support of petition.

EXCELLENT SIR GOVERNOR: I, Pedro Chaboya, a native of this department, with due respect, and as best may tend to the purpose, state before your well-known justice that the superior judiciary tribunal having resolved that Don Tomas Pacheco shall be the proprietor of the tract of land called the Cerritos, which was contested by me and said gentleman, and as I thereby have no further cause of action than to
14 ask for another location, knowing that when the land of Los Cerritos shall be granted to Pacheco in ownership, according to the boundaries which he marks out in his sketch, there is a surplus, the ex-

tent of which is two square leagues, (sitios de granado major,) a little more or less, up to the boundaries of the Mission of San José, I ask your excellency to be pleased to grant me it, together with the water of the ditch marked as terminus and boundary in his sketch, in common with Pacheco, promising, as I do, to present the corresponding plat in due time. Therefore, I ask your excellency to be pleased to accede to my solicitation, whereby I shall receive justice.

I swear to. PEDRO CHABOYA.

MONTEREY, *March 23d, A. D.* 1844.

MONTEREY, *March 23d, A. D.* 1844.

Let the secretary of state report.

MICHELTARENO.

SIR GOVENROR: To come to a correct knowledge about the land claimed, I believe the report of the rev. father of San José and that of the justice of the peace of the pueblo of the same name to be necessary, whilst the corresponding plat ought to be attached hereto.

Your excellency's superior discernment will, however, come to a better resolution.

Monterey, March 23d, 1844.

MANUEL JIMANO.

15 MONTEREY, *March 23d*, 1844.

Let the foregoing report be complied with.

MICHELTARENO.

SIR PREFECT OF THE SECOND DISTRICT: I, Pedro Chaboya, a resident of the Pueblo San José Guadalupe, as best may tend to the purpose, represents that, having solicited a tract of land as shown in the adjoining documents, the governor, Don Manuel Micheltarena, ordered the reverend father minister of the Mission of San José and the alcalde of this pueblo to report, but on account of the revolution which took place at the end of last year this order could not be carried into effect, and the rev. father having left, I do not know of whom to ask for this report in the Mission of San José; wherefore I pray you to be pleased to decree who ought to be asked for it, that my solicitation may be finished by the carrying on of the procedure prescribed by law. Therefore, I pray you to be pleased to decree as prayed for, whereby I shall receive favor.

Pueblo de San José Guadalupe, Dec. 3d, 1845.

PEDRO CHABOYA.

PUEBLO DE SAN JOSÉ, *Dec. 3d*, 1845.

The subprefect of this district will please to report, after having previously taken the necessary action so as to be informed, whether
16 the qualifications demanded by law are present as well in the interested party as to the land, so as to attend to his solicitation.

CASTRO.

PUEBLO DE SAN JOSÉ GUADALUPE,
December 5th, 1845.

In view of the foregoing decree, be this sent to the first alcalde of said pueblo, that he will make the interested party appear and be informed whether the accompanying document presented to the govern-

ment in the year 1844 was exhibited in the shape of a half-sheet, which is an irregular thing, when to leave place for the suitable reports, and whether in the justice court in your charge there is any information before given by the petitioner, and to report in conformity with the law on the subject and the decrees last given by the actual departmental government; and this process having been carried through, you will send it for the report of the rev. father or commissioner for the establishment of San José, returning it to this prefecture.

FRANCISCO GUERREO.

In compliance with the foregoing decree, I caused the citizen Pedro Chaboya, and interrogated on the oath he took whether the representation he addressed to the government under date of 23d day of March, 1844, wherein he solicits a tract of land, was that which he had in
17 right, and whether it had been written in a full sheet or half a sheet, as it appears to have been; he said that on the truth of the oath he took he had made said representation on a full sheet, and while the procedure was being carried on in accordance with the decree in it he presented it to the Rev. Father Muro, and the latter told him to leave it; and that after some days he received it at Santa Clara under cover from the hands of Father Mercedo, and seeing the half-sheet to be failing, he reclaimed it verbally of Father Muro, and the latter answered him that when he remitted it the sheet was full, and that he had sent it with an individual whom he only knew by sight, and that whatever was done he is unable to know how or who cut off the half-sheet, and he left the matter in the shape in which it is now found because he could not do more. As to the second part of the decree, I only say that there is in this justice's court no information formerly given by the petitioner, because he had not asked for it before now; and although I know that the interested party has the right of preference in his favor, having made the solicitation since March last year I shall only say that, by order of this subprefecture, I reported on the 8th instant in favor of the citizen Flujencia Higuera and Mariana Higuera, as the interested party had not presented himself before with any order to
18 ask for a report, and having already before given the report solicited, you will dispose of this matter as may be proper.

Pueblo de San José Guadalupe, 9th of December, 1845.

ANTO. MA. PICO.

JUSTICE'S COURT OF THE PUEBLO OF SAN JOSÉ,
9th of December, 1845.

In conformity with the order given by subprefect, the commissioner for the Mission of San José will report.

PICO.

SIR SUBPREFECT: The undersigned, minister and commissioner for the Mission of San José, has an order from the Excellent Sir Governor to conserve the stock and farming interest of the said Mission, as well as its land and other property, until the same authority shall order what he may think convenient.

Being thus charged by his excellency, I believe therewith to report to you.

Mission of Santa Clara, Dec. 10th, 1845.

F. G. MA. DEL R. I DEL REAL.

SIR PREFECT OF THE 2D DISTRICT: Having taken the necessary re-

port according to your decree in the solicitation of Don Pedro Chaboya, and in virtue of all and in exercise of your powers, you will give it the course you deem suitable, I having to advise that the interested
19 party is possessed of the qualification prescribed by law, and the land belongs to the establishment of San José.

Yerba Buena, Feb. 14th, 1846.

FR'CO GUERREO.

III.

On the 19th of September, 1853, the said Pedro Chaboya also filed before said board in support of his petition a genuine document, in the Spanish language, the following of which is a trans'action:

Translation of document in support of petition of Pedro Chaboya.

EXCELLENT SIR GOVERNOR: I, Pedro Chaboya, resident of the Pueblo of San José, with due respect represents to your excellency that having a numerous family to maintain, and happening to possess a number of farming implements, I want a tract of land of my own to protect them, and therewith to leave a sure patrimony to my sons. Therefore I pray you to be pleased to grant me the ownership of what I actually possess, with my house and cattle, with the permission of the prefecture of this district, showing your excellency that the reclaimations which the residents of the pueblo have addressed against me to that government are absolutely destitute of justice, since it is only made by four or five bad interesting citizens carrying of the views of the pueblo,
20 since in nowise I prejudice their interests, and it happening to be vacant land according to the law of colonization. I solicit the grant of it in consideration of the services I have already done to the country, now as a soldier, and now as a citizen, as the authorities of the same testify. The land I solicit is situated between the boundaries of the Lonarez Bernalez at one point, at Los Narvaez at another, Joaquin Higuerre's, Antonio Chaboya, and one thousand five hundred varas at the side of the pueblo, not exceeding its extent of two sitios, more or less.

Therefore I ask and pray you to be pleased to provide as requested if you believe it just. I swear to the necessary.

Pueblo de San José, May 10th, 1839.

PEDRO CHABOYA.

MONTEREY, *May 10th*, 1839.

Let the prefecture report on the present solicitation, arranging from them that the interested party may be considered in the possession in which he finds himself of the land solicited as long as the suitable procedure is going on.

ALVARADO.

SIR: The petitioner ought to be excused from the usual proceedure, since the prefecture in my charge has already taken and perhaps
21 dispatched it conformable to his solicitation since the reclaimation which the residents of the pueblo of the vicinity have made, and of which I have verbally informed you, have no other design than to remove Sir Chaboya from the place he has occupied for many years, on account of antipathy of previous arrangements which are absolutely destitute of justice.

Notwithstanding, your excellency will act in the premises as you shall deem convenient.

San Juan de Castro, 25 of May, 1839.

JOSÉ CASTRO.

IV.

On the 24th day of October, A. D. 1854, a decree was entered by the board of commissioners rejecting the claim.

V.

A transcript of the proceedings before the board was duly certified to the United States district court of the northern district of California, in which district the land claimed was situated, on the 25th day of May, 1855, and was filed in said court on the 2d day of June, 1855.

VI.

On the 9th day of May, 1855, Pedro Chaboya filed in said district court a notice of his intention to prosecute his appeal from the judgment of the board.

22

VII.

On the 30th of June, 1855, he filed his petition in said court, claiming that the said judgment of the board was erroneous, and praying that the same might be reviewed and reversed, a copy of which petition is as follows:

Petition of Pedro Chaboya for review and reversal.

To the honorable district court of the United States in and for the northern district of California:

PEDRO CHABOYA, APPELLANT, *v.* THE UNITED STATES. } No. 192. L. C. docket. No. 701.

Your petitioner, Pedro Chaboya, respectfully shows that heretofore, to wit, on the 1st day of March, 1853, he filed before the United States board of land commissioners for California a petition for a confirmation of his claim to a tract of land situate in the northern district of California, viz, in the county of Santa Clara, for a description of which land and the title of your petitioner reference is hereby made to said petition.

That after hearing said petition, with the proofs and argument of counsel in the cause, the said board on the 24th day of October, 1854, rejected said claim as invalid.

That on the 2d day of June, 1855, a transcript of the record of
23 said cause was filed in this court, by virtue whereof and by force of the statute in that case made and provided, an appeal to this court was duly effected.

That on the 9th day of May, 1855, your petitioner filed in this court a notice of his intention to prosecute said appeal.

Your petitioner therefore prays that the decision of said board may be reversed, and that this court may confirm his title to said land.

Respectfully,

J. CLARK,
Attorney for Claimant.

Filed June 30th, 1855.

By CHEVERS, *Deputy.*

VIII.

On the 12th day of February, 1857, the attorney for the United States filed in said court his answer to said petition, denying the validity of claimant's title, and praying that the same might be declared invalid.

IX.

On the 15th day of June, 1857, said court made an order, a copy of which is as follows:

Order of United States district court, dated June 15th, 1857.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in
24 the city of San Francisco on Monday, the 15th day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the honorable Ogden Hoffman, district judge.

PEDRO CHABOYA *v.* THE UNITED STATES. } No. 192 district court. No. 171 land commissioners.

On motion of counsel of claimants herein, M'r W'm Blanding appearing in behalf of the United States, and acknowledging due notice, and upon the statement in open court of Jeremiah Clark, a member of the law firm of Clarke, Taylor & Beck, received by consent as an affidavit herein, it is ordered that the claimant herein have leave to amend his original petition by filing a supplemental petition now produced.

Filed June 15th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEEVERS, *Deputy.*

X.

On the 15th day of June, 1857, the said Pedro Chaboya, in pursuance of said order, filed his supplemental petition, a copy of which is as follows:

Supplemental petition of Pedro Chaboya.

To the honorable the judge of the district court of the United States for the northern district of California:

The supplemental petition of Pedro Chaboya respectfully rep-
25 resents, that on the 10th day of May, 1839, he was in possession of and living upon a tract of land situate in the northern district of California, called La Posa de San Juan Bautista, in the present county

of Santa Clara, and bounded by land of Senior Bernalez, called Santa Teresa, on one side of the land of Senior Narvaez, called San Juan Bautista, on another side the land of Antonio Chaboya, called Yerba Buena y Socaire, on another side and extending fifteen hundred varas from the house of said Pedro Chaboya towards the pueblo of San José, and containing two square leagues of land, more or less.

And he says that on said day and year he applied to the Governor of California, Juan B. Alvarado, by petition in writing, for a grant of said tract of land, and on the 20th day of May, 1839, he received from said Governor Alvarado a title to said tract of land, being a decree by which said governor ordered information on the subject from the prefecture, and decreed that said petitioner should be maintained and kept in the possession which he then had of the land he asked for. That on the 25th day of May, 1839, the prefect, José Castro, reported in favor of your petitioner.

He further says that he remained in the possession of said tract of land peaceably and quietly until after the cession of the country
26 to the United States, when he was dispossessed by squatters of portions of it; that his said title and possession has ever since been recognized by the Mexican authorities, and that no other grant of said tract has been made by the Mexican government conflicting with his title; that prior to receiving said title he had built a house on said tract of land and was then in the occupation of it, and after receiving said title he cultivated a considerable portion of said land, and grazed upon it his own cattle, of which he had a large number, and that his cattle were separated from those of his neighbors and of the inhabitants of the pueblo of San José, and grazed on said tract whose boundaries as claimed and possessed by him were respected by his neighbors and the inhabitants of said pueblo.

Your petitioner further says said petition, decree, and report were duly filed before the board of commissioners to ascertain and settle the private land claims in the State of California, in case numbered seven hundred and one, (701,) but that by some mistake the title-papers of another claim of your petitioner to a different tract of land was filed in the same case, of which last-mentioned tract he never was in possession.

Your petitioner says that his petition for the confirmation of his title to said land, filed before the said board of commissioners, prop-
27 erly described the land asked to be confirmed to him as being the land of which he had been in possession since 1840, and also properly mentioned its extent, but, owing to the mistake before referred to, it described the land incorrectly; that his said claim was rejected by said board of commissioners; whereupon the proper proceedings have been taken by him to appeal from the decision of the said board to this court, but that his petition on appeal did not distinctly point out the error above mentioned of his petition to said board of commissioners, because said mistake has only recently been discovered.

He therefore prays the court upon his original petition to this court, and this his supplemental petition, to review the decision of said board of commissioners, and to decree the claim of your petitioner to the tract of land above described, under the title first herein mentioned, to be valid upon the transcript of said commissioners and of the documentary evidence and the testimony of the witnesses on which it was founded, and upon such further and other documentary evidence and testimony of witnesses as he may procure and present to this court.

PEDRO CHABOYA.

Authority to Wilkins, Saunders & Hepburn to appear as attorneys for Pedro Chaboya.

I hereby authorize Henry Wilkins and Saunders & Hepburn to appear for me in this case as my attorneys at law.

PEDRO CHABOYA.

28 *Consent to filing supplemental petition.*

The within being the supplementary petition referred to, the orders of the district court of the United States for the northern district of California, of this date, in the within-mentioned cause, upon claimant's motion to amend, it is hereby consented the same may be filed herein.

15th June, 1857.

W'M BLANDING,
District Attorney.

XI.

The aforesaid petition to the board, the aforesaid petition to the United States district court, of date of the 30th day of June, 1855, and the aforesaid supplemental petition to the United States district court are the only petitions on file in the United States district court, either to the board of land commissioners or to the United States district court; and there is no evidence in the record that any other petition was ever filed in any other tribunal by the said Pedro Chaboya, except such, if any, as arises from the rendition of the decrees in said cause.

XII.

On the 30th of November, 1859, the case having been submitted to the court for a decision, was on motion of the United States again
29 opened, and the order of submission was set aside to enable the United States to introduce further testimony, documentary and otherwise, for the purpose of showing the extent and boundaries of the land occupied by the claimant; and it was further ordered that the claimant should have leave to introduce rebutting testimony as to said points, and that said additional testimony should be confined to said points alone.

XIII.

On the same 30th day of November, 1859, the district attorney of the United States filed in said court on behalf of the Government a certified copy of a genuine document, signed by the alcalde, and recorded on the day of its date in book 3 of the original records of a former pueblo de San José, and now in the custody of the county recorder of Santa Clara, and which document is in the words and figures following, to wit:

Certified copy of the proceedings from book 3, of original records of former pueblo of San José.

Know all men by these presents that in accordance with the decrees of the junta of the pueblo de San José, California, and entered of record on the 29th day of June, A. D. 1847, and in accordance with the con-

firming decree of the people of said pueblo, passed in primary as-
30 sembly, on the thirtieth day of June of the same year, and entered of record in my office, and in accordance with the laws and usages in such cases made and provided, I, Kimball H. Dimmick, first alcalde of the pueblo of San José, duly chosen and qualified according to law, do loan unto Pedro Chaboya and his heirs and assigns forever, for their behoof and benefit, a certain tract of five hundred acres of land, be the same more or less, of the unoccupied lands of the pueblo de San José, known on the plat of said lands made by James D. Hutton, now on file, as lot number six (6) east of the base line, being subject to the following regulations, viz:

First. Said lot of land shall be subject to an annual tax of three dollars, to be paid on the first day of January of each year to the treasury of said pueblo.

Second. There shall be planted at each corner of every lot a fruit tree, or tree of some kind, as a distinctive mark of the boundaries, on or before the expiration of one year from date.

Third. The municipal authorities of the pueblo of San José shall forever retain the right of opening and keeping open any roads that may be for the public benefit through any of said lands.

In witness whereof and in behalf of said pueblo I have hereunto set my hand and seal of office this 3d day of March, A. D. 1849.

KIMBALL H. DIMMICK,
First Alcalde

31 XIV.

The land described in the last aforesaid document is within the boundaries of the land set out and described in the supplemental petition of Pedro Chaboya in the United States district court, and in his petition of the 10th of May, 1839.

XV.

On the 2d day of February, 1860, there was put in evidence on the part of the United States a genuine document, of which the following is a correct translation:

Translation of concession to Pedro Chaboya.

The citizen Dolores Pacheco, justice of the peace of the pueblo of San José Guadalupe de Alvarado, by superior order of the señor prefect of the first district: It is conceded to the citizen Pedro Chaboya that he inhabit the place named Pasa de San Juan Bautista, without building any house of foundation, and much less plant trees, for the term of two years, subjecting himself to pay six dollars annually, and he must assist in the works on bridges and any others by which he may be benefited.

San José Guadalupe de Alvarado, February 29th, 1840.

DOLORES PACHECO.
PEDRO CHABOYA.

32 XVI.

The United States, on the 2d day of February, 1860, filed with said board and put in evidence certified copies of pages 33, 34, 35, 36, and

37 of volume 3 of deeds, in the office of the county recorder of the county of Santa Clara, which are as follows:

Certified copies of certain pages of vol. 3 of deeds, records of Santa Clara County.

1847, January 1st.—Establishment of the junta of the pueblo de San José G'd'e, and its proceedings.

I, John Burton, magistrate of the pueblo de San José G'd'e, do hereby organize a committee for the better regulation of the pueblo and district. The said committee shall be chose' from the most respectable portion of the community, and shall consist of twelve men, to represent the wishes of the people; they shall have power over all the pueblo and district in the regulation thereof.

In laying off the town, building of bridges that may be useful, in fine any business connected with the rights of the people, is intrusted to this committee, under the title of Junta, which is established in order to save the frequently calling together the people, which would be difficult to do.

(Signed) JOHN BURTON, *Magistrate.*

33 The following citizens of the pueblo being chosen and notified of their appointment, felt some reluctance and unwillingness to serve unless directed or chosen by the people; thereupon circulars were sent to all parts of the district and posted up in town in Spanish and in English, notifying the people to assemble to elect twelve men as their choice, who should act on their behalf. Ten days' notice was given for such election.

February 15th, the people having met pursuant to notice proceeded in the following manner:

Whereas we deem it essential to the interests of this pueblo that a committee of twelve men be chosen to represent the wishes of the people, and to watch over and protect their rights, and said committee shall be styled the Junta:

Therefore resolved, That twelve men be elected to govern this pueblo in place of calling all the people together as formerly, and after they shall have been elected, all their actions when in session shall be legal, especially when a majority of them shall agree upon any subject, and sanctioned by the acting magistrate or alcalde, or otherwise when two-thirds of their number shall be present, and all in favor of any subject that may be brought before them.

Resolved, That the following men shall compose this committee for the better regulating of the pueblo, to wit, M'r William Fisher,
34 Don Antonio Suñol, Don José Noriega, Felix Buelna, José Fernandez, Dolores Pacheco, Salvador Castro, Isaac Branham, Julian Hancks, Charles White, J. M. Weeks, G. C. Cook, whose names were put before the assembly and unanimously adopted, and empowered to manage all things that might be beneficial or to the interests of the pueblo.

Done in the pueblo de San José G'd'e, February 15th, 1847.

Regulations made by the pueblo junta in respect to laying off the town.

ARTICLE 1ST. Be it ordained that it is requisite that the pueblo de San José be laid off into blocks, streets, and squares.

ARTICLE 2D. Be it ordained that the streets of this pueblo shall be

in width as follows: those running N. W. and S. E., or main streets, shall be eighty feet wide; and cross streets, except Santa Clara, shall be sixty feet wide; also Market and Fifth, of the main streets, running N. W. and S. E., shall be one hundred, and Santa Clara the same.

ARTICLE 3D. Be it ordained that there shall be three squares in this pueblo: 1st, Market square; 2d, Public square; and 3d, S't James' square.

ARTICLE 4TH. Be it ordained that the blocks shall be each two
34 hundred varas in length and one hundred varas in width, except they be fractional, and each lot shall contain fifty varas square, unless they are fractional.

ARTICLE 5TH. Be it ordained that the price of each lot shall be twelve dollars and four reals, exclusive of fees.

ARTICLE 6TH. Be it ordained that one person obtain by purchase four lots, or half a block, and no more.

Be it further ordained that we do authorize the alcalde to employ a surveyor to survey the town according to this plan and pay for the same from the funds of this pueblo.

Be it further ordained that when the street runs through any lot or lots of individuals, the pueblo shall be responsible for the damages, to be legally valued by three disinterested men; damages to be paid in lots if accepted, or in money as soon as the same is in the treasury.

JUNE 29, 1847.

The junta being called together for the purpose of taking into consideration petitions of several citizens for the obtainment of portions of the pueblo lands, we, the junta, do decree that all of the citizens of this pueblo who are the heads of families shall be each entitled to two thousand varas square, to wit, two thousand varas square to each family, the same to be loaned to them and their heirs forever.

36 We also further ordain and decree that each tract of two thousand varas square shall pay to the said pueblo an annual tax of three dollars per annum, to be paid on the first day of January of each year.

And we further ordain that all the land left after the present citizens of this pueblo shall have received their portions, as aforesaid, shall be apportioned among those who may come in afterwards and become citizens of said pueblo, in the order which they shall become such.

And we further ordain that said pueblo lands shall be surveyed by order of the alcalde, and the persons who take the said lands, as aforesaid, shall pay the expenses of surveying, &c.

We further ordain that the acting alcalde shall give notice to the people of this pueblo to assemble at an early day to give their consent to these ordinances.

We further ordain that the said alcalde shall claim from the aforesaid number of lots one of whom, of two thousand varas square, for the use of a public pueblo school-house, and said tract shall be reserved for said purpose; but in said school or schools no religious teaching shall ever be allowed, but shall be confined solely to primary education, literature, the arts and sciences.

We further ordain that those persons who shall receive their
37 title from the alcalde after the passing of these regulations, and in accordance with them, to use said land for the raising of cattle and for general agricultural purposes.

We further ordain that no person shall be entitled to any benefits

from these ordinances unless he or his family shall be an actual permanent settler or resident of this pueblo.

We further ordain that if the said lands of the pueblo shall have been surveyed, there shall not be sufficient quantity found belonging to said pueblo to allow each head of a family the quantity heretofore specified, then in that case said land shall be divided into equal parts, according to the number of those who wish to obtain them at the date hereof, in accordance with the foregoing decrees, and in that mode so apportioned to the citizens, and the aforementioned taxes shall be, in proportion to the quantity given, at the rate of three dollars for two thousand varas square.

(Signed:) W'm Fisher, Felix Buelna, Isaac Branham, Antonio Suñol, Sal^{d}. M Castro, Dolores Pacheco, James M. Weeks, Charles White, Julian Hancks.

The foregoing proceedings were duly ratified by me.

JOHN BURTON, *Alcalde.*

Be it ordained that on the 30th day of June, 1847, after due notice had been given to the people of this town, and a full meeting had
38 been obtained, the foregoing resolutions and decrees were read to them twice, and, after asking if any was dissatisfied, all unanimously consented to them.

In witness whereof I hereunto affix my hand and seal this 30th day of June, A. D. 1847.

JOHN BURTON.

CHA'S WHITE, *Clerk.*

September 6th, 1847, the following notice was given in Spanish and English:

Noticia al pueblo.

Que todas las personas que estan entitulado a terreno que pertenece al pueblo de San José de G^{de}. què no han pagados los gastos y secados sus lithilo que se presentan en esta jusgada ante la expiracion de diez dias al esta ficha y pagar el ante dicha gastos y en casa de no su pagados en el tempio specificado los individios que asi falta purderan sus derechos y seran dados a ortros ciudadanos de pueblo.

Dado de baja mi firma en cl jusgada del pueblo de San José de G^{de}. el dia 6 de Sep., de 1847.

JOHN BURTON,
Alcalde Pueblo de San José de G^{de}.

CHA'S WHITE, *Clerk.*

XVII.

On the 8th of August, 1861, the claimant gave in evidence a genuine document in the Spanish language, a translation of which is as follows:

39 *Translation of direction prohibiting removal of José Para and Pedro Chaboya.*

PREFECTURE OF THE 1ST DISTRICT: You are directed not to move the citizens of José Para and Pedro Chaboya from the place where they are established until the ejidos of this poblacion is regulated.

God and liberty.

San Juan de Castro, 22d May, 1839.

JOSÉ CASTRO,
Señor Alcalde del Pueblo de Alvarado.

XVIII.

No other documentary evidence was given tending to show title in pedro Chaboya. Much oral testimony was given in relation to his possession. The testimony all showed that he'd a house and lived on the and, the claimant contending that he was in possession of the two leagues under the petition to Alvarado in 1839, and the government contending that up to the time of the document executed by Alcalde Dimmick, in 1849, he was a part of the time an intruder upon the ejidos of the pueblo of San José, and that he had part of the time occup'ed by permission of the authorities of the pueblo. That since the execution of Dimmick document he had been in possession, claiming under it, and that his possession was limited to that five-hundred-acre tract; his house was on the five-hundred-acre tract, which is the
40 same as that described in plaintiff's complaint, and is embraced in the boundaries set out in his supplemental petition to United States district court of date 15th June, 1857.

XIX.

On the 29th day of August, 1861, a decree was made and entered in said district court affirming in terms the decree of the board of land commissioners declaring the claim of Pedro Chaboya invalid, and dismissing his petition to the United States district court for the want of jurisdiction. A copy of which decree is marked "Exhibit A," and hereunto annexed and made a part of this stipulation.

XX.

On the same 29th day of August, 1861, an appeal on the part of the claimant was granted from this decree to the Supreme Court of the United States. That court at the December term, 1862, affirmed the decree of the district court, and a mandate was issued from the Supreme Court to the court below, in the following form:

Mandate of U. S. Supreme Court, December term, 1862.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of California, greeting:

41 Whereas lately, in the district court of the United States for the northern district of California, before you, in a cause between Pedro Chaboya, complainant, and the United States, defendant, the decree of the said district court was in the following words, viz:

This cause came on to be heard upon the papers and the testimony of witnesses taken and filed in pursuance of the order of the court made November 20th, 1859, granting a rehearing in behalf of the United States from the decision of this court rendered in favor of the claimant in June term, 1859, and counsel for the respective parties having been heard and deliberation had, it is now ordered, adjudged, and decreed that the decree of the board of land commissioners heretofore rendered herein be and the same is hereby affirmed; and it is further ordered, adjudged, and decreed that the claim of the said Pedro Chaboya is invalid, and his petition is hereby dismissed for want of jurisdiction, as by the inspection of the transcript of the record of the said district

court which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of December, 1862, the said cause came on to be heard before the said Supreme Court on the said
42 transcript of the record, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

23 Feb.

You therefore are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Hon. Roger B. Taney, Chief-Justice of said Supreme Court, the first Monday of December, A. D. 1862.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

And a copy of which decree of the United States Supreme Court is hereto annexed, marked "Exhibit B," and made a part of this stipulation.

XXI.

On the 25th day of April, 1862, an act was passed by Congress and approved by the President of the United States, a true copy of which is as follows:

43 An act to authorize the district court of the United States for the northern district of California to hear and determine upon its merits the claim of Pedro Cheboya to a certain tract of land in California called La Posa San Juan Bautista.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the district court of the United States for the northern district of California be and is hereby authorized and required to hear and decide upon the merits the claim of Pedro Chaboya to a tract of land described in his amended petition filed in said court on the 15th day of June, 1857, and called La Posa de San Juan Bautista, in the same manner and with the same jurisdiction as if the claim to the said tract of land had been duly presented to the board of land commissioners under the provisions of the act entitled "An act to ascertain and settle the private land-claims in the State of California," approved March 3d, A. D. 1851, and an appeal had been duly taken from their decision to the said district court by the said Chaboya.

SEC. 2. And be it further enacted, That on the said hearing the testimony heretofore taken in said court in relation to the said claim on behalf of the said claimant or of the United States may be read subject to all just exceptions to its competency, and additional testimony
44 on either part may be taken under the direction and order of said district court as to the validity of the said claim or the extent thereof.

SEC. 3. And be it further enacted, That an appeal may be taken from the final decision and decree of said district court to the Supreme Court

of the United States by either party, in accordance with the provisions of the 10th section of the said act of March 3d, 1851.

Approved April 25th, 1862.

XXII.

On the 2d day of June, 1862, Pedro Chaboya filed in said district court a copy of said act of Congress, with a petition to the court praying that the court would hear and decide on the said claim, according to the provisions of said act, which the court undertook to do.

But no further evidence than the evidence already before the court was introduced showing a grant to Pedro Chaboya.

XXIII.

On the 6th day of November, 1862, the said district court made and entered the following decree:

Decree of United States district court of Nov. 6th, 1862.

At a stated term of the district court of the United States of
45 America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 6th day of November, A. D. 1862.

Present, the Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
PEDRO CHABOYA. } No. 192.

This cause came on to be heard in pursuance of the provisions of the act of Congress entitled "An act to authorize the district court of the United States for the northern district of California to hear and determine upon its merits the claim of Pedro Chaboya to a certain tract of land in California, called La Posa San Juan Bautista," approved April 25th, 1862, and the said cause having been regularly brought to a hearing, counsel for the respective parties present, and due deliberation had in the premises:

It is now ordered and decreed that the claim of the said Pedro Chaboya for the tract of land described in his amended petition filed June 15th, 1857, is not valid, and the same is hereby rejected, except for a tract of five hundred acres of land, being the same five hundred acres allotted to said Pedro Chaboya by the authorities of San José, and accepted by him, which said tract of five hundred acres is hereby confirmed to the said Pedro Chaboya.

OGDEN HOFFMAN,
District Judge.

46 (Which five-hundred-acre tract is the land the possession of which is in controversy in this case.)

And on the same day an appeal was taken from the said decree by the claimant, Pedro Chaboya, to the Supreme Court of the United States, but no appeal was taken therefrom on the part of the Government.

XXIV.

At the December term of the Supreme Court, 1862, a judgment was duly entered in said Supreme Court affirming the aforesaid decree of the district court, and the following mandate was issued and sent to the court below:

Mandate of United States Supreme Court, dated first Monday of Dec., 1862.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the district court of the United States for the northern district of California, greeting:

Whereas, lately, in the district court of the United States for the northern district of California, before you, in a cause between Pedro Chaboya, complainant, and the United States, defendants, the decree of the said district court was in the following words, viz:

This cause came on to be heard in pursuance of the act of Congress entitled an act to authorize the district court of the United States
47 for the northern district of California to hear and determine upon its merits the claim of Pedro Chaboya to a certain tract of land in California, called La Posa San Juan Bautista, approved April 25th, 1862; and the said cause having been regularly brought to a hearing, counsel for the respective parties present, and due deliberation had in the premises:

It is now ordered, adjudged, and decreed, that the claim of the said Pedro Chaboya for the tract of land described in his amended petition filed June 15th, 1857, is not valid, and the same is hereby rejected, except for a tract of five hundred acres of land, being the same five hundred acres allotted to the said Pedro Chaboya by the authorities of San José, and accepted by him, which said tract of five hundred acres is hereby confirmed to the said Pedro Chaboya; as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at length appears.

And whereas, in the present term of December, A. D. 1862, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel, on considera-
48 tion thereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed. 23d Feb.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, Chief-Justice of the said Supreme Court, the first Monday of December, A. D. 1862.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

And a copy of which decree of the United States Supreme Court is marked "Exhibit C," hereunto annexed, and made a part of this stipulation.

XXV.

But one opinion was delivered in the Supreme Court of the United

States on both of these appeals, and that is the same reported in 2d Black Rep., page 593.

EXHIBIT A.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 29th day of August, A. D. 1861.

Present, the Hon. Ogden Hoffman, district judge.

49 THE UNITED STATES } No. 192.
v.
PEDRO CHABOYA. }

This cause came on to be heard upon the papers and the testimony of witnesses taken and filed in pursuance of the order of court, made November 20th, 1859, granting a rehearing in behalf of the United States from the decision of this court rendered in favor of the claimant in June term, 1859; and counsel for the respective parties having been heard, and due deliberation had, it is now ordered, adjudged, and decreed that the decree of the board of land commissioners heretofore rendered herein be, and the same is hereby, affirmed. And it is further ordered, adjudged, and decreed that the claim of the said Pedro Chaboya is invalid, and his petition is hereby dismissed for want of jurisdiction.

W'M MATHEWS,
Attorney for Plaintiffs..
PECKHAM & PAYNE,
Attorneys for Defendants.

DEC. 8TH, 1868.

EXHIBIT B.

Supreme Court of the United States, December term, 1862.

PEDRO CHABOYA, APP'T, } No. 131.
v.
THE UNITED STATES. }

Appeal from the district court of the United States for the northern district of California.

50 This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of California, and was argued by counsel; on consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

23d Feb., 1863.

I, D. W. Middleton, clerk of the Supreme Court, do hereby certify that the above is a true copy of the decree of said court in the case of Pedro Chaboya, app't, v. The United States, No. 131, of December term, 1862, as the same remains on the records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, the 23d of February, A. D. 1867.

[SEAL.]

D. W. MIDDLETON,
Clerk Supreme Court of the United States.

EXHIBIT C.

Supreme Court of the United States, December term, 1862.

PEDRO CHABOYA, APP'T, v. THE UNITED STATES. } No. 288.

Appeal from the district court of the United States for the northern district of California.

51 This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of California, and was argued by counsel; on consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

23d Feb., 1863.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the above is a true copy of the decree of said court in the case of Pedro Chaboya, appellant, v. The United States, No. 288, of December term, 1862, as the same remains on the records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, 23d Feb., A. D. 1867.

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court of the United States.

It was here agreed by and between counsel for all parties that the tract of land mentioned in the first petition to the United States board of land commissioners, set out in the said stipulation, lies north of the Mission of San José, in the present county of Alameda, and does not include the premises in controversy in this action; and that
52 the tract of land mentioned in the supplemental petition, set out in said stipulation, to the district court of the United States for the northern district of California, does include the land in controversy in this action.

Plaintiffs here read in evidence the decree of the district court of the United States for the northern district of California in the case of the United States v. Pedro Chabolla, herein set out and marked "Exhibit A," also the decrees of the Supreme Court of the United States, herein set out and marked respectively Exhibits B and C; counsel for plaintiffs stating that upon those decrees plaintiff relied to prove title to five-hundred-acre lot No. 6 under the facts agreed upon in the said stipulation.

To the introduction of which several decrees counsel for the defendants objected at the time they were offered, on the ground that the district court had no jurisdiction to make or enter said decree aforesaid made by said court, and because said decree was absolutely void for want of jurisdiction in said district court to make the same.

Which objections were by the court overruled, to which ruling the defendant excepted.

Plaintiffs here read in evidence the following deeds:

First. A deed from Pedro Chaboya to William Claude Jones and Nathaniel T. Eldridge; which deed is as follows:

53 *Deed.—Pedro Chaboya to W. C. Jones and N. T. Eldridge.*

This indenture, made this 26th day of December, in the year eighteen hundred and fifty, between Pedro Chaboya, of the first part, and William Claude Jones and N. T. Eldridge, of the second part, both of the county of Santa Clara, in the State of California, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, and for the further payment of the same the said party of the second part is forever acquitted and discharged, and in the further consideration of legal services rendered by the said party of the second part, hath granted, bargained, sold, and delivered, and by these presents doth grant, bargain, sell, and deliver unto the said party of the second part, their heirs and assigns, in fee-simple forever, a certain tract or parcel of land, being the northeast half league of the land or rancho of the said Pedro Chabolla, bounded on the east by the lands or ranchos of the Higueras and Antonio Cheballo, on the north by the lots or lands of the Pueblo de San José Guadalupe, and on the south and west by the lands of the said Pedro Cheballo, the same to be as near in a square form as possible, and according to rectangular
54 lines, and the same to contain exactly one-half of a league square, the said land being situated in the county of Santa Clara, and State of California; to have and to hold the same to the said party of the second part, their heirs and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant with the said party of the second part, their heirs and assigns, that the premises are free from all incumbrances made or suffered by him, and that he will, and his heirs, executors, and administrators shall, warrant and defend the same to the said party of the second part, their heirs and assigns, forever against the lawful claim and demands of all persons claiming by, through, or under him, but against none others.

In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and date first above written.

(The words "and Antonio Cheballo" and "a league square" interlined before signed.)

PEDRO CHABOYA. [SEAL.]

Testes: FREDERICK HALL.
J. J. MAY.

STATE OF CALIFORNIA,
Santa Clara County:

On this the 26th day of December, 1850, before me personally came Pedro Chavoya, personally known to me to be the person who
55 subscribed the foregoing deed, and acknowledged to me that he executed the same freely, voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my private seal, there being as yet no official seal, the date last above written.

[SEAL.] JOHN T. RICHARDSON,
Recorder in and for said County.

Filed 12½ o'clock p. m., 26th December, 1850.
J. T. RICHARDSON,
Recorder S. C. C.

Recorded book of deeds, C, pp. 178, 177.
J. T. RICHARDSON, *Recorder.*

J. FLOURNOY, *Dep'ty Rec.*

Second. A deed from William Claude Jones to Edson Adams; which is as follows:

Deed.— W. C. Jones to Edson Adams.

This indenture, made this 27th day of October, A. D. 1858, between William Claude Jones, of the county of Alameda, in the State of California, of the first part, and Edson Adams, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand four hundred and eighty-two dollars to him
56 in hand paid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does sell, grant, bargain, and convey unto the said party of the second part all that certain tract or parcel of land situate and being in the county of Santa Clara and State of California known and described as follows, to wit: The undivided right, title, claim, and interest of the said party of the first part in and to the north half league of the rancho known as "Las Posas," or the rancho of Pedro Chavoya, which said north half league is bounded on the south by the lands of Pedro Chaboya, on the east by the lands of the Higuera and Antonio Chavoya, on the north by the pueblo de San José de Guadalupe, and on the west by the lands of Narvaez; the said interest consisting of one *of one* thousand four hundred and eighty-two acres, more or less, being the same tract of land conveyed by Pedro Chavoya to the said party of the first part jointly with one N. T. Eldridge by deed dated the 26th day of December, A. D. 1850, and recorded in book C of deeds, page 177, in the recorder's office of the county of Santa Clara, together with all the appurtenances, tenements, and hereditaments thereunto belonging or anywise appertaining; to have and to hold all and singular the said premises, with the appurtenances, unto the said Edson Adams, upon the
57 trusts, nevertheless, and to and for the uses, interests, and purposes hereinafter limited, described, and declared; that is to say, upon trust to receive the issues, rents, and profits of the said premises or the proceeds thereof as hereinafter mentioned, and apply the same to the use of Maria Vicenta del Refugio Contreras y Rouguillo de Jones, of the county of Dona Ana, in the Territory of New Mexico, during the term of her natural life, except as hereinafter and further provided, and after her death the same to revert absolutely to and vest in the said party of the first part, his heirs, executors, administrators, and assigns. And after the death of the said party of the second part, then said property, or if the same shall have been sold, as hereinafter provided, the proceeds thereof, shall pass to and absolutely vest in the said Maria Vicenta del Refugia Contreras y Rouguillo de Jones, if she shall then be living, but if not living then said property or said proceeds to revert absolutely, with the profits thereof, to the said party of the first part, his heirs, executors, administrators, and assigns. And it being the desire and wish of the said party of the first part that the aforesaid premises should be sold and converted into ready cash, the power to sell the same is hereby expressly conveyed and given to the said party of the second part, and he is hereby constituted the
58 true and lawful attorney of the said party of the first part, in his place and stead to sell said premises whenever in his opinion he shall be able to receive the just value thereof, and to make and execute good and sufficient deeds therefor, and to do and perform all other acts necessary to be done to consummate such sale, and to collect all pay-

ments and parts of payments due therefor, which sale, when made, the proceeds thereof shall be held by the said party of the second part in trust, in manner and for the benefit of the persons aforesaid, and subject to the said reservations and limitations hereinbefore mentioned.

And it is the intention of the parties hereto that the aforesaid conveyance in trust is to be so construed and rendered as not to conflict with the power to sell hereby given to the said party of the second part. And he is hereby further invested with the right to retain for his reasonable expenses and services necessarily incurred and rendered in and about the premises aforesaid a percentage sufficient to remunerate him therefor. And it is hereby further specified and understood as an object of this trust that in consideration that Thomas W. Mulford, of the county of Alameda, in the State of California, has advanced to the party of the first part the sum of twelve hundred and fifty dollars, with the view and object of purchasing jointly with the said party of
59 the second part, and having deeded and conveyed to them the rancho of Francisco Garcia y San Juan, in the county of Dona Ana, in the Territory of New Mexico, containing ten thousand two hundred acres according to the surveys, on the east bank of the Rio Grande, in front of the town of La Mesa, being the same tract of land granted by José Ordaz, lieutenant-governor of the State of Chihuahua, to Juan Antonio Garcia, and confirmed by the Government of the United States to his son and heir, Francisco Garcia y San Juan, the said party of the first part hereby stipulates that in case of his death, the loss of the money advanced, or his failure to make the purchase of the said tract of land within three months from the date hereof, then the said party of the second part is authorized and required, out of the proceeds of the land hereby conveyed in trust, to pay to the said Thomas W. Mulford, or his legal representatives, the said sum of twelve hundred and fifty dollars, with the lawful interest thereon, immediately after the knowledge of death, loss of money, or failure to act within the proper time of the said party of the first part, or so soon thereafter as sufficient proceeds of this trust are in the hands of the said party of the second part.

In testimony whereof the said party of the first part has hereunto set his hand and seal this 27th day of October, A. D. 1858.

W. CLAUDE JONES. [SEAL.]

60 STATE OF CALIFORNIA,
County of Alameda, ss:

On this 27th day of October, A. D. 1858, personally appeared before me, A. M. Brockelbank, a notary public in and for said county, W. Claude Jones, to me personally known to be the individual described in and who executed the foregoing conveyance, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal the day and year above written.

[SEAL.] A. M. BROCKELBANK,
Notary Public.

(Indorsed:) Filed for record at request of R. Simson, at 3 o'clock p. m. Nov. 22d, 1858.

AUSTIN M. THOMPSON, *Recorder*,
By T. F. GRANT, *Deputy.*

Recorded in book M of deeds, pages 67, 68, and 69, records of Santa Clara County.

AUSTIN M. THOMPSON, *Recorder*,
By T. F. GRANT, *Deputy.*

on the first day of March, 1858, by deed recorded in book L of deeds in the land records of said county of Santa Clara, on page 520. Now the said party of the first part, for and in consideration of the sum of two thousand dollars to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm unto the said parties of the second part, and unto their heirs and assigns forever, in fee and to be held and possessed by the said parties of the second part and their respective heirs and assigns as tenants in common in the following proportions respectively, to wit, the said David Umbarger, ninety seven hundred and fortieths, ($\frac{90}{740}$;) to the said Dennis Lehey, ninety-eight seven hundred and fortieths, ($\frac{98}{740}$;) to the said George E. Hanna, ninety-eight seven hundred and fortieths, ($\frac{98}{740}$;) to the said William Quinn, one hundred seven hundred and fortieths, ($\frac{100}{740}$;) to the said William Swall and Peter Swall, together, one hundred and ninety-four seven hundred and fortieths, ($\frac{194}{740}$;) to the said Samuel J. Hensley, one hundred seven hundred and fortieths, ($\frac{100}{740}$;) to the said Milus Gay, fifty seven hundred and fortieths, ($\frac{50}{740}$;) and to the said Samuel McGinnes, ten seven hundred and fortieths, ($\frac{10}{740}$;) all the estate, right, and interest, and title in
67 and to and unto said north half league of said premises, which was conveyed by said Jones to said Adams, and by said Adams to party of the first part.

In witness whereof, the said party of the first part has hereunto set his hand and affixed his seal the day and year first above written.

THO'S W. MULFORD. [SEAL.]

[Words "L. L. Kidder" in two places erased, word "Sam'l J. Hensley" interlined, before signing.]

STATE OF CALIFORNIA,
County of Santa Clara, ss :

On this twenty-fifth day of August, A. D. one thousand eight hundred and sixty-two, before me, Cha's N. Senter, a notary public in and for Santa Clara County, duly commissioned and sworn, personally appeared the within-named Tho's W. Mulford, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, and said Thomas W. Mulford acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] CHARLES N. SENTER,
Notary Public.

68 Filed for record at request of Geo. Hanna, August 25th, 1862, at 4 $\frac{5}{60}$ o'clock p. m. Recorded in book of deeds, pages 755, 756, and 757, records of Santa Clara County.

L. C. BOSTWICK, *Recorder*,
By M. LEAVENWORTH, *Deputy.*

Plaintiff then offered in evidence a document produced from the custody of the recorder of the county of Santa Clara, which document with its various certificates and endorsements thereon and attached, were as follows, viz:

Espediente of Antonio Chaboya for his rancho Socayre y Yerba Buena.

(Translation, page 87; original, page 206, 209.)

Stating that it was offered to show the eastern boundary of the land described in the deed from Pedro Chaboya to Jones and Eldridge, and also to show the eastern boundary of the rancho or lands of Pedro Chaboya, mentioned in the deed from Pedro Chaboya to Jones and Eldridge.

Plaintiffs offered in connection with said alleged espediente the patent of the said rancho of Yerba Buena, found on pages seven to twelve of the book of patents, in the recorder's office of said county of Santa Clara, the same being as follows:

Patent of rancho of Yerba Buena.

The United States of America to all to whom these presents shall come, greeting:

69 Whereas it appears from a duly-authenticated transcript, filed in the General Land-Office of the United States, that pursuant to the provisions of the act of Congress approved the 3d day of March, 1851, entitled "An act to ascertain and settle the private land-claims in the State of California," Antonio Chaboya, as claimant, filed his petition on the 9th day of March, 1852, with the commissioners to ascertain and settle the private land-claims in the State of California, sitting as a board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land situated in the county of Santa Clara, and known by the name of Yerba Buena or Socayre; said claim being founded on possession, by permission of the authorities of the municipality of San José de Guadalupe, as recognized and decreed by Don José Figueroa, governor of California, on the 25th of November, 1833; and whereas the board of land commissioners aforesaid, on the 17th day of October, 1854, rendered a decree of confirmation in favor of said claimant, which decree or decision was on appeal affirmed by the district court of the United States for the northern district of California, at a stated term on the 21st day of January, 1858, and the said court did order, adjudge, and decree that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed to the
70 extent and quantity of six square leagues; the land of which confirmation is hereby made is that on which Chaboya resides, known by the name of "Yerba Buena," or "Socayre," situated in Santa Clara County, and bounded and described as follows, to wit: bounded on the south by the Puerto Suelo de las Animas; on the north by the land of M'r Joaquin Higuera, and the dry lagoon of the Pueblo of San José Guadalupe; on the east by the top (cuchilla) of the adjoining hills; and on the west by the rancho of the Bernales, and the Punta del Robla in the vicinity of Coyota Creek; containing six square leagues, providing said quantity of six square leagues be contained within said boundaries, and if there be less than said quantity of six square leagues within said boundaries, then such less quantity is hereby confirmed to the said claimant, reference for more particular description to be had to the grant and the map thereto attached on file in this case; and whereas it further appears from a certified transcript, on file in the General Land-Office, that a stipulation having been entered into between the United States attorney and the attorney for the claimant that no

further appeal would be taken on the part of the United States in this case, the aforesaid district court, at a stated term on the 8th day of October, 1858, ordered that claimant have leave to proceed under
71 the decree of this court heretofore rendered in his favor as under final decree; and whereas, under the 13th section of the said act of 3d March, 1851, there have been presented to the Commissioners of the General Land-Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 19th day of November, 1858, by the signature of the surveyor-general of the public lands in California, which plat and certificate are in the words and figures following, to wit:

"U. S. SURVEYOR-GENERAL'S OFFICE,
"*San Francisco, California.*

"Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled 'An act to ascertain and settle the private land-claims in the State of California,' and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled 'An act making appropriations for the civil and diplomatic expenses of the Government for the years ending the 30th of June, 1853, and for other purposes,' and in consequence of a certificate of the United States district court for the northern district of California, of which a copy is annexed, having been filed in this office, whereby it appears that the Attorney-General of the United States having given notice that it was not the intention of the United States to prosecute the appeal
72 from the decision of the said district court by which it recognized and confirmed the title and claim of Antonio Chaboya to the tract of land designated as Yerba Buena or Socayre, containing six square leagues, the said appeal has been vacated by the said district court, and thereby the said decision in favor of the said Antonio Chaboya has become final. The said tract of land has been surveyed in accordance to the grant thereof and the said decision, and I do hereby certify the annexed map to be a true and accurate plat of the said tract of land, as appears by the field-notes of the survey thereof made by John Wallace, deputy surveyor, in the month of October, 1858, under the directions of this office, which, having been examined and approved, are now on file therein; and I do further certify that under and by virtue of the said confirmation and survey the said Antonio Chaboya is entitled to a patent from the United States upon the presentation hereof to the General Land-Office for the said tract of land, the same being bounded and described as follows, to wit: Beginning at a point in the center of the Coyote Creek, fifteen links wide, opposite to the Punta del Roblar, from which a sycamore twenty-four inches in diameter, marked 'Y. B. No. 1,' bears north sixty-five degrees east, distant fifty links; thence meandering up the center of Coyote Creek, (this being the
73 division line between this rancho and the rancho of Santa Teresa,) according to the true meridian, the variation of the magnetic needle being fifteen degrees thirty minutes east, south seven degrees west four chains and seventy-five links to station; thence south forty-eight degrees east six chains and sixty links to station; thence north sixty-eight degrees thirty minutes east sixteen chains seventy links to station; thence south fifteen degrees fifteen minutes east nineteen chains to station; thence south fifty-two degrees thirty minutes east fifteen chains to station; thence south twenty-nine degrees thirty minutes east, at sixteen chains a house and peach-orchard are on the right

bank, twenty-two chains to station; thence south fifty-five degrees east eleven chains to station; thence south nine degrees fifteen minutes east twenty-seven chains fifty links to station; thence south sixty-two degrees fifteen minutes east thirteen chains to station; thence south seventy-six degrees east fourteen chains to station; thence south sixty-three degrees thirty minutes east eight chains to station; thence south sixty-nine degrees thirty minutes east fifteen chains to station; thence south fifty-one degrees east twenty-three chains to station; thence south forty-three degrees east twenty one chains to station; thence south twelve degrees thirty minutes east nineteen chains to station;
74 thence south forty-six degrees east sixteen chains to station; thence south fifty-nine degrees forty-five minutes east twenty-two chains to station; thence south eighteen degrees forty-five minutes west thirty chains to station; thence south twenty-eight degrees fifteen minutes east nineteen chains to station; thence south eighty-two degrees fifteen minutes east ten chains and ninety links to three large sycamore-trees, the creek being six chains wide, a house is on the right bank, twenty-three chains to station; thence south sixty-two degrees fifteen minutes east twelve chains and eighty links to a post at intersection with range line between ranges one and two east, township seven south, twenty-two chains and fifty-eight links, north of corner to sections one, six, thirty-one, and thirty-six, forty-five chains and twenty links to station; thence south five degrees east seven chains forty-six links to a post at intersection with township line between township seven and eight south, of range two east, twenty-nine chains and thirty-seven links east of corner to sections one, six, thirty-one, and thirty six, twenty-three chains to station, from which the point of Lagrimas Hill on the left bank of the creek bears west; thence south twenty-seven degrees thirteen minutes east, at two chains a house is on the left bank of the creek, at twelve chains and seventy links crosses a fence, course east and west thirteen chains to
75 station; thence south two degrees west eleven chains to station; thence south forty-eight degrees east nine chains to station; thence south sixty-two degrees fifteen minutes east three chains and fifty links to a brush fence, course northeast and southwest, ten chains to brush fence, course east and west, thirteen chains to station; thence south thirty-six degrees thirty minutes east twelve chains to station; thence south twenty-two degrees thirty minutes west eight chains to station, the creek being two chains wide; thence south seven degrees east seven chains to station; thence south twenty-two degrees thirty minutes west eleven chains and ninety links to a live-oak tree forty inches in diameter, twelve chains to station; thence south forty-one degrees east, at one chain and twenty links crosses a road, course northeast and southwest, twenty-four chains to station; thence south forty-five degrees thirty minutes east sixteen chains to station, the creek being two chains wide; thence south seventy-three degrees east fifteen chains to station, the creek being three chains wide; thence north thirty degrees east, at eight chains the creek is five chains wide, at twenty chains the creek is two chains wide, twenty-four chains to station; thence south fifty-three degrees fifteen minutes east ten chains to station; thence south forty-three degrees thirty minutes east
76 twenty chains to station, the creek being four chains wide; thence south fifty-two degrees east twenty-three chains to station, the creek being six chains wide; thence south thirty-four degrees thirty minutes east twenty chains to station, the creek being four chains wide; thence south eighteen degrees thirty minutes east, at forty chains the creek is three chains wide, sixty chains to station, the creek being six

chains wide; thence south fifty-nine degrees forty-five minutes east, at eighteen chains the creek is eight chains wide, thirty chains to station, the creek being five chains wide; thence south sixty-nine degrees thirty minutes east, at twelve chains one channel of the creek bears off to the southeast, twenty-one chains to station; thence south twenty-one degrees fifteen minutes east, at five chains the above-mentioned channel joins the main channel, four chains wide, at the left bank of the creek, and another channel two chains wide bears off to the southeast, at twenty-six chains and twenty links crosses the stage-road to San José, course northwest and southeast; twenty-nine chains to a post twenty inches in diameter marked 'Y. B. No. 2,' 'L. L. No. 10,' and 'A. No. 1,' being a corner of the Rancho La Laguna Seca, and the east corner of the Alvirez field, station on the left bank of the creek, and on the east side of a new road, course south fifteen degrees east, and north twenty-five degrees west, from which a white-oak tree fourteen
77 inches in diameter bears north sixty-six degrees west, distant fifty links, and a white-oak tree thirty inches in diameter bears south, distant sixty-eight links; thence retracing the boundary of the Laguna Seca Rancho north fifty-four degrees fifteen minutes east, at one chain crosses the stage road to San José, course northwest and southeast; three chains to the right bank of Coyote Creek, course northwest; eleven chains and twenty links to the left bank of a branch of Coyote Creek, course northwest; seventeen chains to the right bank of same; twenty-six chains to the foot-hills, and leaving the valley; seventy-six chains to a ravine, course west; one hundred and forty-one chains to post marked 'Y. B. No. 3,' and 'L. S. No. 11,' in a mound of rocks on the summit of the hills, station, from which United States Coast Survey signal on a high mountain bears north twenty-three degrees thirty minutes east, distant about two and a half miles; thence south forty-two degrees east forty chains and seventy-five links to a post marked 'Y. B. No. 4' in a mound of rocks in a sink in the mountain or the head of a flat ravine, course southwest, station; thence leaving the boundary of the Laguna Seca Rancho, and running along the division line of this rancho and the 'San Felipe de los Animas' north forty degrees forty-five minutes east, at six chains crosses a shallow ravine, course
78 north; seventeen chains to a point of the spur of the mountain, course northwest, the same ravine being three chains to the northwest; at thirty-eight chains crosses same ravine, course east; forty-five chains to a road, course southeast and northwest; forty-five chains and fifty links to a white-oak tree twenty inches in diameter, with old marks, at a place called 'Portozuelo de las Animas;' thence ascending fifty-four chains to the top of hill, and descends sixty-five chains to a ravine, course southeast; seventy-one chains to a ravine, course south; eighty-five chains to the top of a conical hill; one hundred chains to a ravine, course southeast; one hundred and four chains and forty links to a live-oak tree three feet in diameter on a spur of a hill; one hundred and seven chains to a ravine, course south; one hundred and thirteen chains to a ridge, course northwest and southeast; one hundred and nineteen chains to a ravine, course east; one hundred and twenty-eight chains to a ravine, course southeast; one hundred and thirty-four chains to a spur of the ridge, course south twenty-five degrees east; one hundred and sixty chains and seventy-five links to a ravine, course south; one hundred and seventy chains and fifty links to a spur of ridge, course northwest and southeast; one hundred and seventy-nine chains to a ravine, course southeast; one hundred and ninety-four chains to a spur of ridge, course northwest and southeast; two hundred and five

79 chains and fifty-nine links to a black-oak tree three feet in diameter in a hollow near a dry lagoon; two hundred and twenty-one chains to a deep ravine, course south; two hundred and twenty-four chains to the top of ridge, course north and south; two hundred and twenty-eight chains to a ravine, course east; two hundred and thirty-two chains and ninety links to a post marked 'Y. B. No. 5,' on a spur of the ridge, course east, station, from which a white tree two feet in diameter bears south twenty-four degrees thirty minutes east, distant eighty-two links, a white oak tree twenty inches in diameter bears south forty-six degrees, distant sixty-six links, and a white-oak tree sixteen inches in diameter bears north two degrees west, distant sixty links; thence along the division line between this rancho and the rancho 'Cañada de Pala' north thirty-two degrees west, twenty-one chains and eighty links to a small oak tree on a spur of the ridge, course northeast; fifty-eight chains and fifty-six links to a ravine, course northeast; sixty-six chains and ninety links to a double live-oak tree, each fork of which is twelve inches in diameter; seventy-eight chains and fifty links to a spur of the ridge, course northeast; eighty-seven chains and thirty links to a bushy ravine, course northeast; one hundred and sixteen chains and
80 fifty links to a spur of the ridge, course northeast; one hundred and twenty-three chains and seventy links to a black-oak tree thirty inches in diameter; one hundred and thirty-two chains to a ravine, course northeast; one hundred and thirty-six chains and forty links to a white-oak tree eighteen inches in diameter; one hundred and fifty chains and twenty-five links to a ravine, course northeast; one hundred and eighty chains and thirty links to a ravine, course east; one hundred and ninety-nine chains and thirty links to a small ravine, course northeast; two hundred and six chains to a ravine, course east; two hundred and ten chains to a dead oak tree twenty-four inches in diameter; at two hundred and fifteen chains the above-mentioned Coast Survey Signal bears south five degrees thirty minutes east, distant about two miles; thence mostly on top of ridge, two hundred and nineteen chains and fifty links to the head of a flat ravine, course west; two hundred and thirty chains and fifty links to a black-oak tree three feet in diameter; two hundred and fifty-three chains and ninety links to a white-oak tree two feet in diameter in a flat ravine, course east; three hundred and forty-two chains to a ravine, course west; three hundred and fifty-one chains and eighty-five links to a live-oak tree eighteen inches in diameter; at three hundred and fifty-nine chains and fifty links 'the high point of ridge is three chains to the right
81 of line; at four hundred and six chains and fifty links the summit of the hill is one chain to the west of line; four hundred and nineteen chains to the head of a ravine, course southwest, and to a road, course southwest; and northeast four hundred and thirty-four chains and ten links to the head of a ravine, course north; four hundred and thirty-nine chains and fifty links to a sink in the ridge; at four hundred and forty-nine chains and fifty links a high point of ridge is two chains to the southwest of line; four hundred and sixty-one chains to the head of a ravine with a thick growth of underbrush, course southwest; fo ir hundred and sixty-four chains and fifty links to a post marked 'Y, B. No. 6,' in the summit of the ridge, station; thence south seventy-six degrees west twenty chains and fifty links to the head of two flat ravines, course north and south; twenty-three chains and fifty-five links to a white-oak tree twenty inches in diameter on the summit of hill; thence descending thirty-four chains and fifty links to a ravine, course south; thirty-eight chains to a ravine, course southeast; forty-eight

chains and fifty links to a ravine, course south; at sixty-one chains, Chevoya's adobe house; south sixty-six degrees west ninety chains to a ravine, course north sixty-three degrees west; ninety-eight chains
82 to a point on the side hill sloping to the northwest; one hundred and ten chains to a point on a small piece of table land from which Chevoya's adobe house bears south thirty-nine degrees west; one hundred and thirteen chains and eighty links to a white-oak tree four feet in diameter; at one hundred and fifteen chains and thirty links crosses a ravine, course southwest; one hundred and forty-nine chains and thirty-five links to a black-oak tree two feet in diameter (having an old cross cut in it) at the foot of the hills, and enters a valley; two hundred and thirty-eight chains to a redwood post marked 'P. No. 4;' thence along the dividing line with 'Pala' rancho two hundred and ninety-two chains and twelve links to a post at intersection with range line between ranges one and two east, eighteen chains and thirty links south of corner to sections seven, twelve, thirteen, and eighteen, township seven south; three hundred and eighteen chains to an oak stump and a post marked 'Y. B. 7,' being also marked for a corner of Pala Rancho, station, from which a live-oak tree thirty inches in diameter bears north twenty-five degrees west, distant one chain and forty-seven links; thence north thirty-four degrees fifteen minutes west thirty chains to a fence, course north fifty-eight degrees east and south fifty-eight degrees west; thirty chains and thirty links to a post marked 'Y. B. No. 8,'
83 station, from which a house bears north thirty-eight degrees east, distant three chains and fifty links, and a white spot on the mountains bears north sixty-five degrees thirty minutes east, and thence towards the Punta del Roblar, and leaving the 'Pala' rancho south sixty-five degrees thirty minutes west; four chains to a fence, course south twenty degrees east and north twenty degrees west; thirty chains and sixty links to a fence, course as above; forty-eight chains and eighty links to a fence, course as above; one hundred and seventy-eight chains and seventy links to the place of beginning; containing 24,342 $\frac{64}{100}$ acres and being designated upon the plats of the public surveys as lot No. 38 in township 7 south, of range 1 east, lot No. 37 in township 7 south of range 2 east, lot No. 37 in township 7 south, of range 3 east, lot No. 39 township 8 south, range 2 east, and lot No. 38 in township 8 south, range 3 east, of the Mount Diablo meridian.

"In witness whereof I have hereunto signed my name and caused the seal of the said office to be affixed at the city of San Francisco this 19th day of November, A. D. 1858.

[SEAL.] "J. W. MANDEVILLE,

"*United States Surveyor-General, California.*"

(Plan of the Rancho Yerba Buena or Socayre finally confirmed to Antonio Chaboya.)

[Here follows map marked page 83.]

84 Now know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, have given and granted, and by these presents do give and grant unto the said Antonio Chaboya and to his heirs the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the confirmation of this said claim and this patent shall not

affect the interests of third persons; to have and to hold the said tract with the appurtenances unto the said Antonio Chaboya, and to his heirs and assigns, forever, with the stipulation aforesaid.

In testimony whereof I, James Buchanan, President of the [SEAL.] United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington this 3d day of January, in the year of our Lord 1859, and of the Independence of the United States the eighty-third.

JAMES BUCHANAN.

By the President:
By V. J. ALBRIGHT, *Secretary.*

I. N. GRANGER,
Recorder of the General Land-Office.

Recorded Vol. 2, pages 26 to 41, inclusive.
Exd. J. S. N.

85 *Order of district court declaring patent to Yerba Buena genuine.*

District court of the third judicial district of the State of California, in and for the county of Santa Clara.

At the March term of said court, Hon. Sam. Bell McKee, judge, 1859.

On motion of W'm Mathews, counsel for Gustave Touchard, an owner of the rancho hereinafter named, and on due proof to the court that public notice of the time and place of making this application was given by publishing the same in the San José Telegraph, a weekly newspaper printed and published in the said county of Santa Clara, on the 23d day of March, 1859, and on producing and submitting to the court for its inspection the within and annexed patent for lands lying within the said county of Santa Clara, and known as the "Rancho Yerba Buena," or "Socayre," the exterior limits or boundaries of which said rancho are as follows, to wit: bounded on the south by the Puerto Suelo de los Animas, on north by the land of M'r Joaquin Higuerra and the dry lagoon of the Pueblo of San José Guadalupe, on the east by the top (cuchilla) of the adjoining hills, and on the west by the rancho of the Bernales and the Punta del Roblar in the vicinity of Coyote Creek, which patent purports to have been issued by the Government of the United States to Antonio Chaboya on the 3d day of January of the present year, 1859, and
86 the court being satisfied on the inspection thereof that the said within and annexed patent is genuine, it is therefore ordered by the court, in conformity with the act of the legislature of the State of California passed April 29th, 1857, entitled "An act concerning certified copies of certain instruments in writing," that the within and annexed patents be and the same is hereby declared to be genuine in all respects, and entitled to record under and by virtue of said act; and that this order be indorsed upon or annexed to the said patent under the seal of the said court, and an entry of the same made in the minutes of this court.

Dated San José, March 30th, 1859.

[SEAL.]

SAM. BELL McKEE,
District Judge.

Attest:

JNO. B. HEWSON, *Clerk.*

Counsel for defendants objected to the admission of said documents comprised in said espediente for the reason that the same is not certified to be a copy of any original title papers or of any espediente in the Government archives.

The objection was overruled by the court, and said documents read in evidence to the jury. To which ruling the defendants excepted.

A translation of said espediente was here read in evidence, the same being marked "Exhibit F," and is as follows:

87 *Exhibit F.—Petition of Antonio Chaboya.*

[Third seal, two reals.]

Provisionally authorized for the maritime custom-house for the port of Monterey for the years of 1840 and 1841.

ANTONIO MARIA OSIO.

JIMENO.

To his Excellency the Governor:

I, Antonio Chaboya, a native of the department and a resident of the Pueblo of San José Guadalupe, before your excellency respectfully represent: that since the year 1833 I have occupied the place named Yerba Buena, situated in the jurisdiction of said pueblo, in accordance with a concession made to me on the 25th of November of the same year by the Señor General Don José Figueroa, superior political chief and commandant general of the territory, as appears by the documents herewith presented to your excellency, and said concession being of a provisional character, with onerous conditions which notably affect my interests, having already built a house, cultivated the ground, and placed my stock thereon, I have to ask your honor to be pleased to grant me the said place of Yerba Buena in property, of the extent of six square leagues, bounded on the south by the Porto Suelo of Las Animas,
88 on the north by the land of Don Joaquin Higuerra, and by the Laguna Seca of the said pueblo, on the east by the cuchilla of the neighboring sierra, and on the west by the rancho of the Bernales and the point of the Roblar, near the Arroyo del Coyote, which land pertains to the ejidos of the pueblo.

Wherefore I pray your excellency to be pleased to take this my petition into consideration, and grant me the said land in property, in which I will receive grace and justice.

Monterey, January 4th, 1840.

ANTONIO + CHABOYA.

MONTEREY, *January 5th*, 1840.

Let the prefect of the first district report what may be necessary on the foregoing petition.

ALVARADO.

To his Excellency the Governor:

The prefecture under my charge has carefully examined this petition, and finding that the statement therein made by the citizen Antonia Chaboya in relation to his having possessed the place named La Yerba Buena for some years, also in relation to the boundaries mentioned in his petition, together with the fact that it does not pertain to any individual or pueblo, since the Pueblo of San José Guadalupe has not yet had its ejidos marked out in accordance with the laws, the prefecture is

of the opinion that your excellency may grant said place in property to the said Chaboya, that is, the six square leagues for which he
89 petitions, subject to the boundaries set forth in said petition.
Pueblo of San José de Castro, Feb. 17th, 1840.

JOSÉ CASTRO.

MONTEREY, *February 20th*, 1840.

In view of the present petition and the accompanying documents, together with the reports in relation thereto, and all other matters necessary to be considered, I grant in ownership to the citizen Antonio Chaboya the place named Yerba Buena, situated in the jurisdiction of the Pueblo of San José Guadalupe, of the extent of six square leagues, a little more or less, of which he has already taken the possession, in accordance with the boundaries set forth in this petition.

JUAN B. ALVARADO.

Plaintiffs here gave in evidence a document produced from the custody of the county recorder of Santa Clara County, which document with its various certificates thereon and attached thereto, are as follows:

Espediente of José Higuera for Rancho Pala.

H. 16 No. 1.

(1) Sello Primero, seis pesos.

Habilitado provicionalmente por la administracion de la Aduana Maratima de Monterrey de la Alta California para los años de mil ocho cientos treinta y cuartro y ocho cientos treinta y cinco.

A. RAMIREZ.

FIGUEROA.

90 José Castro, primer vocal a la Elma. Diputacion Territorial, Gefe Politico intereno del Territorio de la Alta California.

[SEAL.]

Por cuanto, José Higuera Mejicano pr. nacimiento á pretendido po. su veneficio personal i el de su familia el terreno conosido con el nombre de Pala practicadas las dili gencias í abenguasciones conservnientes segun lo dispuesto pr. leyes y reglamentos usando de las facultades ql. me sur conferidas decreto de este dia í a nombre de la Nacion Mejicano benido en consederle el terrena mencionado Pala declarandole la propriedad de él pr. las presentes letras a reserva de la aprovacion de la Elm. Deputacion Territorial bajo las condiciones siguientes.

1a. Que se sometra a las ql. estableciere el reglamento ql. se ha de formar pa. la distrivucion de terrenos baldios í ql. entre tanto ni el agrasiado ni sus heredéros podran divider ni enajenar el q! se les adjudica imponer senso, vinicule, impoteca, fianza ni otro gravamen aunque sea po causa peadosa ni pasa lo a manos muertas.

2a. Podra cercarle sin perjudicar las travesías caminos í cervidumbres lo disfrutara livre í esclusivamente destidandolo el uso í cultivo ql. mas le acomode po. dentro de un año á lo mas fabricara casa í estara abitada.

91 3a. Solicitara al jues respectivo ql. le de la posecion juridica en virtud de este despacho pr. el cual la senalaran los linderos en cuyos limites pondran á mas de las mohoneras algunos arboles frutales ó silvestres de alguna utilidad.

4ª. El torreno de q[l]. se hase mension es un citio de ganado.

(2) Mayor segun esplica el diseno q[l]. corre en el espediente. El q[l]. diere la posecion juridica lo hara medír conforme á ordenanza q dando el sobrante q[l]. resulte á favor de la nacion p[a]. los usos convenientes.

5ª. Si contraveniere á estas condiciones perdera su derecho al terreno y sera denunciable p[r]. otro. En consequencia mando que sirviendole de titulo el presente í teniendose por firme í balidero se tome razon de el en el libro q[l]. corresponde í se entregue al interesado p[o]. su resguardo i demas fines.

L. S. Dros 20 ps.

Dado en Monterrei a cinco de Noviembre de mil ocho cientos treinta y cinco.

JOSÉ CASTRO.

Fer del CASTILLO.
NEGRETE.

Queda tomada razon en el líbro q[l]. corresponde a fojas ochendasi dos í senalado con el numero ochenta que obra en la Secretari de mi cargo.

L. S. Dros 10 ps.

Monterrei, N[bre]. 5 de 1836.

CASTILLO.

(Map of Pala.)

(Here follows map marked page 91.)

92 *Certificate of surveyor-general to espediente of Rancho Pala.*

Office of the surveyor-general of the United States for California.

I, Sherman Day, surveyor-general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land-claims in California, by virtue of the power vested in me by law, do hereby certify that the 3 preceding and hereunto annexed pages of tracing-paper, numbered from 1 to 3, inclusive, exhibit a true, full, and correct copy of the original grant of the rancho of Pala, together with map of said rancho, which grant and map were filed by claimant before board of land commissioners, and are now on file in my office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 13th day of Sept., 186 .

[SEAL.]

SHERMAN DAY,
United States Surveyor-General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

93 Filed at request of C. T. Ryland, esq., September 14th, A. D. 1869, at 45 minutes past 3 o'clock p. m.

JOS. R. JOHNSON,
County Recorder,
By JOHN M. LITTLEFIELD,
Dep. Co. Rec.

At the same time the plaintiffs offered what was admitted by the parties to be a correct translation into the English language of said document, as follows:

Translation of espediente of Rancho Pala.

[First seal, six dollars.]

Provisionally authorized by the administration of the maritime custom-house of Monterey, of Alta California, for the years 1834 and 1835.

A. RAMIREZ.

FIGUEROA.

José Castro, senior member of the most excellent territorial deputation, and political chief of Alta California:

Whereas Don José Higuerra, a Mexican by birth, has petitioned, for his personal benefit and that of his family, for the tract of land known by the name of Pala, the necessary proceedings having been taken and the investigations made as required by the laws and regulations, by virtue of the authority conferred on me in decree of this day in the name of the Mexican nation, I have determined to grant him the said tract of land of Pala, declaring to him the ownership thereof by these
94 presents, subject to the approval of the most excellent territorial deputation had to the following conditions:

First. That he shall be subject to the regulations to be established for the distribution of vacant lands, and in the mean time neither the grantee nor his heirs shall be allowed to divide or alienate the land granted, impose upon it rent, entail land, or mortgage, or any other incumbrances, although it should be for pious purposes, or convey it in mortmain.

Second. He may inclose it without prejudice to the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, devoting it to the use or cultivation which may be most convenient; but within one year he shall build a house on the land, which shall be inhabited.

Third. He shall solicit the respective judges to give him juridical possession by virtue of this title, by which the boundaries shall be marked out, on the limits of which shall be placed, besides the landmarks, some fruit-tree or useful forest-trees.

Fourth. The land of which mention is made is of the extent of one square league, as shown by the map in espediente. The judge who may give the possession will cause the same to be measured in accordance with the ordinances; the surplus that may result to remain to the use of the nation.

95 If he violate these conditions he shall lose his right to the land, and it will be by another. In consequence thereof I order that this document, serving him as a title, and being held as firm and valid, be registered in the corresponding book, and be delivered to the interested party for his security and further ends.

Given in Monterey on the 5th of November, 1835.

JOSÉ CASTRO.

FRANCO DEL CASTELLO,

Ayute.

This title remains registered in the corresponding book, on folio 82, which entry is numbered 80 in the office under my charge.

CASTILLO.

Counsel for plaintiffs stating at the time of offering said espediente that it was for the purpose of locating the east line of the land described in said deed from Pedro Chaboya to Jones and Eldridge, and also to show the eastern boundary of the lands or rancho of Pedro Chaboya.

Plaintiffs also gave in evidence the patent for the Rancho San Juan Bautista, the same being as follows:

Patent for Rancho San Juan Bautista.

The United States of America to all to whom these presents shall come, greeting:

Whereas it appears from a duly authenticated transcript filed
96 in the General Land-Office of the United States that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land-claims in the State of California," Augustin Narvaez, as claimant, filed his petition on the 27th day of February, 1852, with the commissioners to ascertain and settle the private land-claims in the State of California, sitting as a board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land known by the name of "San Juan Bautista," containing two square leagues, more or less, situated in the county of Santa Clara and State aforesaid, said claim being founded on a Mexican grant to the petitioner, made on the 30th day of March, 1844, by Manuel Michel Torena, then governor of Upper California; and, whereas the board of land commissioners aforesaid, on the 15th day of November, 1853, adjudged "that the said claim of the petitioner is not valid, and his application for a confirmation is therefore denied," which decree or decision having been carried by appeal to the district court of the United States for the northern district of California, the said court, as appears from a duly certified transcript on file in the General Land-Office, at a stated term on the 5th day of July, 1855, in the cause
97 entitled "Augustin Narvaez v. The United States," ordered, adjudged, and decreed "that the said decision of the said commissioners is hereby reversed, annulled, and set aside; and it is hereby further ordered, adjudged, and decreed that the claim of the appellant, Augustin Narvaez, be and the same is hereby confirmed and adjudged to be a good and valid claim to the extent of two square leagues, (or sitios de ganados mayor,) and for no more, in the lands described in the grant set forth in the record, provided said quantity of land to him granted and now to him confirmed be contained within the boundaries called for in said grant, and if there be less than two square leagues, or sitios de gan'do mayor, within said limits, then there is confirmed to him the less quantity;" and, whereas it appears from a certified transcript on file in the General Land-Office that at a stated term of the aforesaid district court on the 5th day of January, 1860, the following proceedings were had:

AUGUSTIN NARVAEZ
v.
THE UNITED STATES. } L. C. 75, D. C. 7.

It appearing to the satisfaction of the court that J. S. Black, Attorney-General of the United States, and C. H. W. Mecham, attorney of the said Augustin Narvaez, in the above cause, in the Supreme Court of the United States, have signed and filed with the clerk of the said

98 Supreme Court an agreement in writing, directing the said case to be dismissed; and it further appearing that the said Augustin Narvaez has consented to the said agreement and discontinuance, and that the said clerk has entered the said case dismissed pursuant to the sixty-fourth rule of the said Supreme Court of the United States, in consideration of which, and upon motion of the said Augustin Narvaez, by his attorneys, Thornton, Williams and Thornton, it is now hereby ordered and adjudged that the copy of the above proceedings certified by W'm T. Carroll, clerk of the Supreme Court of the United States, under the seal of said court, be filed in the clerk's office of this court, and that the said Augustin Narvaez be at liberty, according to the terms of said agreement, to proceed and obtain a survey and patent in conformity with the decree of confirmation heretofore entered in this cause and the acts of Congress relating to private land-claims in California.

And whereas it further appears from a duly certified transcript on file in the General Land-Office that this cause having been brought before the aforesaid district court, in the matter of survey and location, the said court, at a stated term, on the 27th day of February, 1863, rendered its decision as follows:

99 THE UNITED STATES } Dist. court, No. 7.
r.
AUGUSTIN NARVAEZ. }

In the matter of the survey and location of the Rancho San Juan Bautista, this cause came on this day to be heard, and was argued by counsel; and it appearing to the court that intervenor S. J. Easley and intervenors Isaac Branham and Jackson Lewis have withdrawn their exceptions to the official survey in this case, and that no objections are now urged against said survey; and the court being of opinion that the same is a true and accurate survey of the lands of the said rancho, it is now therefore ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree that the said official survey be, and the same is hereby, approved as a true and accurate survey of the lands of the said rancho. The survey hereby approved is the same made by Charles T. Healy, United States deputy surveyor, in May, 1860, containing eight thousand eight hundred and seventy-nine and fifty-four hundredths acres ($8,879\frac{54}{100}$) of land, a duly-certified plat of which said survey was filed in the clerk's office of this court on the 17th day of November, 1860, and which said plat is hereunto attached as a part of this decree, marked "Approved February 27th, 1863. Ogden Hoffman, district judge."

100 And whereas there have been presented to the Commissioner of the General Land-Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 2d day of December, 1863, by the signature of the surveyor-general of the public lands in California, which plat and certificate are in the words and figures following, to wit:

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
San Francisco, California.

Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the thirtieth of June,

Counsel for plaintiffs stating at the time of offering said espediente that it was for the purpose of locating the east line of the land described in said deed from Pedro Chaboya to Jones and Eldridge, and also to show the eastern boundary of the lands or rancho of Pedro Chaboya.

Plaintiffs also gave in evidence the patent for the Rancho San Juan Bautista, the same being as follows:

Patent for Rancho San Juan Bautista.

The United States of America to all to whom these presents shall come, greeting:

Whereas it appears from a duly authenticated transcript filed
96 in the General Land-Office of the United States that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land-claims in the State of California," Augustin Narvaez, as claimant, filed his petition on the 27th day of February, 1852, with the commissioners to ascertain and settle the private land-claims in the State of California, sitting as a board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land known by the name of "San Juan Bautista," containing two square leagues, more or less, situated in the county of Santa Clara and State aforesaid, said claim being founded on a Mexican grant to the petitioner, made on the 30th day of March, 1844, by Manuel Michel Torena, then governor of Upper California; and, whereas the board of land commissioners aforesaid, on the 15th day of November, 1853, adjudged "that the said claim of the petitioner is not valid, and his application for a confirmation is therefore denied," which decree or decision having been carried by appeal to the district court of the United States for the northern district of California, the said court, as appears from a duly certified transcript on file in the General Land-Office, at a stated term on the 5th day of July, 1855, in the cause
97 entitled "Augustin Narvaez v. The United States," ordered, adjudged, and decreed "that the said decision of the said commissioners is hereby reversed, annulled, and set aside; and it is hereby further ordered, adjudged, and decreed that the claim of the appellant, Augustin Narvaez, be and the same is hereby confirmed and adjudged to be a good and valid claim to the extent of two square leagues, (or sitios de ganados mayor,) and for no more, in the lands described in the grant set forth in the record, provided said quantity of land to him granted and now to him confirmed be contained within the boundaries called for in said grant, and if there be less than two square leagues, or sitios de gan'do mayor, within said limits, then there is confirmed to him the less quantity;" and, whereas it appears from a certified transcript on file in the General Land-Office that at a stated term of the aforesaid district court on the 5th day of January, 1860, the following proceedings were had:

AUGUSTIN NARVAEZ
v.
THE UNITED STATES. } L. C. 75, D. C. 7.

It appearing to the satisfaction of the court that J. S. Black, Attorney-General of the United States, and C. H. W. Mecham, attorney of the said Augustin Narvaez, in the above cause, in the Supreme Court of the United States, have signed and filed with the clerk of the said

98 Supreme Court an agreement in writing, directing the said case to be dismissed; and it further appearing that the said Augustin Narvaez has consented to the said agreement and discontinuance, and that the said clerk has entered the said case dismissed pursuant to the sixty-fourth rule of the said Supreme Court of the United States, in consideration of which, and upon motion of the said Augustin Narvaez, by his attorneys, Thornton, Williams and Thornton, it is now hereby ordered and adjudged that the copy of the above proceedings certified by W'm T. Carroll, clerk of the Supreme Court of the United States, under the seal of said court, be filed in the clerk's office of this court, and that the said Augustin Narvaez be at liberty, according to the terms of said agreement, to proceed and obtain a survey and patent in conformity with the decree of confirmation heretofore entered in this cause and the acts of Congress relating to private land-claims in California.

And whereas it further appears from a duly certified transcript on file in the General Land-Office that this cause having been brought before the aforesaid district court, in the matter of survey and location, the said court, at a stated term, on the 27th day of February, 1863, rendered its decision as follows:

99 THE UNITED STATES } Dist. court, No. 7.
v.
AUGUSTIN NARVAEZ. }

In the matter of the survey and location of the Rancho San Juan Bautista, this cause came on this day to be heard, and was argued by counsel; and it appearing to the court that intervenor S. J. Easley and intervenors Isaac Branham and Jackson Lewis have withdrawn their exceptions to the official survey in this case, and that no objections are now urged against said survey; and the court being of opinion that the same is a true and accurate survey of the lands of the said rancho, it is now therefore ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree that the said official survey be, and the same is hereby, approved as a true and accurate survey of the lands of the said rancho. The survey hereby approved is the same made by Charles T. Healy, United States deputy surveyor, in May, 1860, containing eight thousand eight hundred and seventy-nine and fifty-four hundredths acres ($8,879\frac{54}{100}$) of land, a duly-certified plat of which said survey was filed in the clerk's office of this court on the 17th day of November, 1860, and which said plat is hereunto attached as a part of this decree, marked "Approved February 27th, 1863. Ogden Hoffman, district judge."

100 And whereas there have been presented to the Commissioner of the General Land-Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 2d day of December, 1863, by the signature of the surveyor-general of the public lands in California, which plat and certificate are in the words and figures following, to wit:

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
San Francisco, California.

Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the thirtieth of June,

eighteen hundred and fifty-three, and for other purposes;" and in consequence of the annexed copy of a certificate of the United States district court for the northern district of California having been filed in this office, whereby it appears that the decision of the said district court has become final, said decision having recognized and confirmed the title and claim of Augustin Narvaez to the tract of land designated as San Juan Bautista, the said appeal has been vacated, and thereby
101 the said decision in favor of the said Augustin Narvaez has become final, the said tract has been surveyed in conformity with the grant thereof and the said decision, and I do hereby certify the annexed map to be a true and accurate plat of the said tract of land, as appears by the field-notes of the survey thereof made by Charles T. Healey, deputy surveyor, in the month of May, under the directions of this office, which, having been examined and approved, are now on file therein. And I do further certify that said approved plat was, during the publication under the said act, and from objections made by the confirmé, ordered into the United States district court of the northern district for inspection; and the said objections being withdrawn by said confirmé, a final decree was had in said district court, returning the said survey to the files of this office, a copy of which is also hereto annexed. And I do further certify that a final decree confirming said survey has been filed in this office, a copy of which is also annexed hereto. And I do further certify that under and by virtue of the said confirmation, survey, and decree, the said Augustin Narvaez is entitled to a patent from the United States upon presentation hereof to the General Land-Office for the said tract of land, the same being bounded and described as follows, to wit: Beginning at a white-oak tree, fourteen inches
102 in diameter, marked "N. No. 19," standing on the right bank of the Arroyo de los Gatos, from which Weir's house bears south forty-eight degrees west, five chains; thence down the center of the channel of said Arroyo de los Gatos, according to the true meridian, the variation of the magnetic needle being fifteen degrees thirty minutes east, north seventy-five degrees east, thirty-one chains to station; thence north forty-seven degrees thirty minutes east, twenty-nine chains to station; thence north seventy-one degrees east, at thirty-three chains and sixty links intersects Mount Diablo meridian, six chains and fifty links south of the northwest corner of section 31, township 7 south, range 1 east, forty-one chains fifty links to station; thence north thirty-four degrees thirty minutes east, thirty-three chains seventy-two links to station; thence north forty-six degrees thirty minutes west, fifteen chains sixty links to station; thence north fifteen degrees thirty minutes east, eleven chains twenty links to station; thence north four degrees east, twenty-five chains to station; thence north thirty-four degrees thirty minutes west, eighteen chains forty links to station; thence north two degrees fifteen minutes west, twenty-five chains to station; thence north forty-seven degrees forty-five minutes east, twenty-seven chains to station; thence north twenty-five degrees west, six chains to station; thence north forty-one degrees fifteen min-
103 utes east, eighteen chains fifty links to a sycamore post four inches square, marked "N. No. 20," standing on the right bank of the Arroyo de los Gatos, from which a sycamore tree six inches in diameter, marked "B. T. N. No. 20," bears north ten degrees east, forty links distant; thence leaving the channel of the said arroyo north eighty-eight degrees east, sixteen chains enter willows, forty-five chains thirty links leave willows, fifty-three chains enter boggy land, fifty-five chains leave the boggy land, fifty-nine chains twenty-three links to a redwood post

four inches square, marked "N. No. 21," standing on the left bank of the Guadalupe River, from which a sycamore tree four feet in diameter, marked "B. T. N. No. 21," bears north sixty-four degrees east, thirty-eight links distant; thence running up the center of the channel of the Guadalupe River south fifty-one degrees thirty minutes east, sixteen chains seventy-seven links to station; thence south seven degrees thirty minutes west, twenty-seven chains seventy-five links to station; thence south twenty degrees thirty minutes east, twelve chains forty-five links to a sycamore post three inches square, marked "N. No. 1;" thence south five degrees west, ten chains twenty-eight links to a sycamore post three inches square, marked "N. No. 2;" thence south twenty-nine degrees east, nine chains ninety-two links to a sycamore post three
104 inches square, marked "N. No. 3," standing in the beginning or swamp at the head of the said Guadalupe River, a sycamore tree eight inches in diameter, marked "B. T. No. 3," bears north eighty-six degrees west, sixty-two links distant; thence leaving the swamp land south thirty-seven degrees thirty minutes east, thirty-two chains sixty links cross center of a lane running northeast and southwest, thirty-seven chains thirty-eight links to a willow post four inches square, marked "N. No. 4," standing on the left bank of the Arroyo Seco de Guadalupe, from which a willow tree fourteen inches in diameter, marked "B. T. No. 4," bears south forty-eight degrees west, twenty and a half links distant; thence up the center of the channel of the said Arroyo Seco de Guadalupe south nine degrees thirty minutes east, eighteen chains six links to station; thence south sixteen degrees thirty minutes west, twenty-six chains to a sycamore tree five feet in diameter standing nearly in the center of the channel, marked "N. No. 5;" thence leaving the arroyo south sixty-four degrees east, fifty links cross road from San José to New Almaden, forty-one chains to a white-oak post three inches square, marked "N. No. 6," standing in a monument of stones, from which a white-oak tree fourteen inches in diameter, marked "B. T. N. No. 6," bears south fifty-six degrees thirty minutes east, three
105 chains twenty links distant; thence meandering along the western base of the San Juan Bautista Hills, following up a small watercourse, south fourteen degrees thirty minutes east, twenty chains seventy-six links to a redwood post three inches square, marked "N. No. 7," standing in a monument of stones; thence south seventy-three degrees east, seventeen chains ten links to a willow tree one foot in diameter, marked "N. No. 8;" thence north fifty-eight degrees east, twenty-four chains to a redwood post three inches square, marked "N. No. 9," in a monument of stones; thence south fifty-one degrees east, twenty-two chains to a redwood post two and a half inches in diameter, marked "N. No. 10;" thence south nineteen degrees east, nineteen chains and twenty links to a willow tree one foot in diameter, marked "N. No. 11;" thence south fifteen degrees thirty minutes west, eight chains and thirty-eight links to a white-oak tree one and a half feet in diameter, marked "N. No. 12," standing at the southwest point of the San Juan Bautista Hills; thence leaving the hills south thirty-four degrees thirty minutes east, seventeen chains and twenty-three links intersect township line between townships 7 and 8 south, range 1 east, seven chains east of the northeast corner of section four set a redwood post two and a half inches square, N. S. 3, S. 34, one hundred and two chains and seventy links to a willow tree one and a half feet in diame-
106 t r, marked "N. No. 13;" thence south eighteen degrees west, one hundred and thirty chains to foot of Pueblo Hills, one hundred and forty-two chains to a leaning white-oak tree one and a half

feet in diameter on summit of said hills, marked "N. No. 14," also old marks "B. & W.;" thence along the ridge of said Pueblo Hills north seventy-three degrees west, thirty-two chains to a buckeye post four inches square, marked "N. No. 15," standing in a monument of stones; thence descending the western slope of the hills south eighty-seven degrees thirty minutes west, thirty chains to a sycamore post four inches square, marked "N. No. 16," standing in a monument of stones in the channel of the eastern fork of the aforesaid Arroyo Seco de Guadalupe, from which a sycamore tree four feet in diameter, marked "B. T. No. 16," bears south sixty degrees forty-five minutes east, ninety-two links distant; thence down the aforesaid channel north nineteen degrees thirty minutes west, forty-three chains to a sycamore tree one foot in diameter standing in channel at the junction of the two forks of the Arroyo Seco de Guadalupe, marked "N. No. 17;" thence up the center of the channel of the west fork of said Arroyo Seco, which fork is called the Capitancillos, south eighty-six degrees west, one chain twenty links cross road from San José to New Almaden, forty-three chains to station; thence
107 south one degree west, thirteen chains seventy-five links to station; thence south sixty-two degrees fifteen minutes west, sixteen chains sixty-six links to station; thence south thirty-eight degrees thirty minutes west, thirteen chains seventy links to station; thence south fifty-nine degrees west, sixteen chains fifty links to station; thence south eighty-six degrees west, twelve chains fifty links to station; thence south forty-seven thirty minutes west, twelve chains to station; thence south thirty-five degrees thirty minutes west, thirteen chains twenty links to a sycamore post, four inches square, standing in a monument of stones in the channel of the Arroyo de los Capitancillos, marked "N. No. 18," from which a sycamore tree, one and a half feet in diameter, marked "B. T. N., No. 18," bears south eighty-five degrees west, one chain forty-five links distant, and the leaning limb, eight inches in diameter, of a sycamore tree, marked "B. T. N., No. 18," bears north seventeen degrees thirty minutes east, sixty-five links distant, Harry Richmond's house bears north eighteen degrees east, ten chains; thence leaving the arroyo, and running *two*'rds the place of beginning north thirty degrees west, twenty-four chains fifty links, cross a road in white-oak timber, running northeast and southwest eighty chains to shallow, isolated hill, about eight feet in height, lies about ten chains to
108 the left, one hundred and twelve chains forty links cross arroyo, ten links wide, to northeast, one hundred and twenty-nine chains forty links intersect Monte Diablo meridian, twenty-eight chains thirty links, south of northeast corner of section twelve, township eight south, range one west, set a redwood post three inches square, marked "N. S. 12, S. 7," two hundred and fifty-one chains line passes two chains west of Seneca Jones' house, two hundred and fifty-four chains intersects township line between township 7 and 8 south, range 1 west, fifteen chains fifteen links east of the northwest corner of section one, set a fir post three inches square, marked "N. S. 1 S. 36," two hundred and sixty-three chains, large white-oak tree in line, two hundred and ninety-five chains to place of beginning, containing eight thousand six hundred and seventy-nine and fifty-four hundred' acres, and being designated on the plat of public surveys as lot number forty-one, township seven south, range one east; lot number forty-three, township seven south, range one west; lot number thirty-seven, township eight south, range one east; lot number thirty-nine, township eight south, range one west, all of Mount Diablo meridian.

In witness whereof I have hereunto signed my name officially,
109 and caused the seal of my office to be attached, at the city of San Francisco, this 2d day of December, 1863.

[SEAL.] E. F. BEALE,
United States Surveyor-General, California.

(Plat of the rancho of San Juan Bautista.)

(Here follows map marked page 109.)

And whereas there has been deposited in the General Land-Office of the United States a certificate dated 12th November, 1863, from the clerk of the United States district court for the northern district of California, showing that since the filing of "the aforesaid decree on the 27th day of February, 1863, no appeal has been taken to the Supreme Court of the United States, and that the time prescribed by law for the taking of an appeal has expired:"

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, have given and granted, and by these presents do give and grant unto the said Augustin Narvaez, and to his heirs, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act, the confirmation of this said claim and this patent "shall not affect the interests of third persons; to have and to hold the said tract, with the appurtenances, unto the said Augustin Narvaez, and to his heirs and assigns forever, with the stipulation aforesaid.

110 In testimony whereof I, Andrew Johnson, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington this 1st day of December, in the year of our Lord 1865, and of the Independence of the United States the ninetieth.

[SEAL.] ANDREW JOHNSON.

By the President:
By EDW. D. NEILL, *Secretary.*

I. N. GRANGER,
Recorder of the General Land-Office.

Recorded vol. 5, pages 244 to 254 inclusive. Ex'd.

CHARLES T. HEALEY, a witness called for plaintiff, sworn and examined by plaintiff.

Question. Will you tell the jury, if you please, if you have examined this supplemental petition of Pedro Chaboya to the district court of the United States, and if you know that tract of land therein described?

Answer. I know the location of the tract described.

Q. Look at this expediente of the Yerba Buena, and read the description in that petition; and also look at the map therein, and tell
111 the court if you know anything about that land, (expediente of Alvarado grant.)

A. Yes, sir.

Q. Look at this map in Yerba Buena patent, and say if you know the land contained there; and read the description, or enough to tell the jury whether you know the land described in that patent.

A. This is a map of the Yerba Buena rancho as patented.

Q. Where is it?

A. On the Coyote, at the lowest point on the Coyote, where the line of the Yerba Buena makes a corner and runs towards the mountains.

Q. Are you familiar with that rancho?

A. Yes, sir.

Q. You have often examined it all?

A. I surveyed it all.

Q. Tell the jury about how far north of the old house of Pedro Chaboya that point is—that Punta del Roblar.

A. How far directly north of the house?

Q. Yes, sir; in a line drawn across the country there from the Coyote. First, how far north is that house?

A. About a mile.

Q. In a northerly direction?

A. Yes, sir.

Q. Have you a diagram of that country there?

112 A. Yes, sir; it shows the location of the different ranchos and the location of the site of the old house.

Witness here produced a diagram, which is as follows:

(Here follows map, marked page 112.)

Q. These are the patent lines?

A. Yes, sir.

Q. Where would a line drawn across the country here (showing on the diagram) fifteen hundred varas north of the house, that is, the line being fifteen hundred yards from the house, where would that be projected on that paper?

The witness here describes the boundaries to the jury on the map.

Q. State whether a quarter of a league, laid off in a rectangular form, bounding on the Coyote Creek, on the Yerba Buena rancho, and this fifteen-hundred-vara line, would not include lot six.

A. It would.

Q. Wholly or in part?

A. Wholly, I think.

Q. Do you know whether such a line, run across from the Coyote westerly to the San Juan Bautista rancho, so that the nearest point to the house would be fifteen hundred varas from it, that line

113 would separate or would not separate the lands called and known as the lands of the Pueblo San José from any lands of any rancho?

A. Yes, sir.

Q. Then the lands north of that land are known as the lands of the city and pueblo of San José?

A. Yes, sir.

Q. Where is the San Juan Bautista rancho on this diagram you produce?

A. It is to the south-southeast, southwest rather.

Q. Southwest?

A. Yes, sir.

Q. Where is the Santa Teresa?

A. Southeast.

Q. Taking the Coyote to be the west boundary of the Pala rancho and the west boundary of the Yerba Buena rancho, would those ranchos, together with the rancho San Juan Bautista, the line to the north fifteen hundred varas north of the house of Pedro Chaboya, and the Santa

Teresa as a boundary, include a tract of land absolutely—any tract of and?

A. It would.

Q. Well, sir, will you mark down how that would be? Show to the ury so that they will understand what tract of land that would be.

The witness describes to the jury on the diagram.

114 Q. Is that the same or a different tract from that of which you read a description in the supplemental petition of Pedro Chaboya, which I just placed in your hands?

A. The tract embraced between the lines of these ranchos, as stated by you, includes the same lands.

Q. The tract I pointed out—is it the same or a different tract of land rom that which you read the description of?

A. It is the same, if I understand you.

Q. Well, sir, you read this. That is a description?

A. Yes, sir.

Q. Now listen to this description in deed from Chaboya to Jones et al., and say whether any portion of it—of these lands; and if so, what, are included or excluded from the description. Referring to the eastern boundary or call of the Yerba Buena as the tract which you have shown, how would that land be marked down on that map; regarding this eastern call as a call for the Yerba Buena rancho, where would it be located on that diagram?

A. You make no reference to the Higueras?

Q. No, sir. Where would that land be located, making reference to lot six?

A. It would be located here in this place.

115 Q. Would it exclude or include lot six east of the base-line?

A. It would include it.

Q. Wholly, or in part?

A. Wholly.

Q. Will you run your eye through the description contained in these various deeds from Claude Jones to Edson Adams, and from Edson Adams to Mulford, and from Mulford to the plaintiffs, and tell the jury whether those calls are the same or different from the tract of land which you have located on the maps?

A. It is the same.

Q. Is there any difference in the description of these deeds?

A. No, sir; they describe the same piece of land.

Q. This you mean refers to the original deed?

A. Yes, sir.

Q. I ask you to identify the description of these two deeds.

A. Yes, sir; they are the same.

Q. Look at the description of this tract of land mentioned in the expediente of Pedro Chaboya, mentioned in the third section of that stipulation, and tell the jury what difference there is, if any, between the calls of that and the calls of the supplemental petition to the dis-

116 trict court of the United States, and point to the jury—show them what is the difference between the two—what call is mentioned in one that is not in the other?

A. It differs in this respect: in this (showing) the calls for the land of Higueras are omitted.

Q. Which do you mean?

A. The second.

Q. In the petition to the district court there is no calls for the Rancho Higuera, and in the first there is; is there any other difference?

A. I don't see any other difference.

Q. Both call for a line fifteen hundred varas north of his (Chaboya's) house?

A. Yes, sir.

Q. Look at the expediente—this attached to the map or the Pala or Higuera Ranch; this is the same, is it not?

A. Yes, sir.

Q. Where would that be with reference to the tract of land which you have marked down as the rancho of Pedro Chaboya? Would it touch it, or would it not touch it?

A. It would not touch it.

Q. Whereabouts?

A. At the Coyote Creek.

Q. How far would a line drawn fifteen hundred varas from his house across the Coyote be from the point where such a line would touch the Coyote?

A. About a quarter of a mile.

117 Q. Well, then, what distance would that tract of land which you have marked down as the ranch of Pedro Chaboya coincide with the boundaries of that ranch, as laid down in this expediente?

A. About one-quarter of a mile.

Q. What separates the Rancho Santa Teresa from Antonio Chaboya Rancho?

A. The Coyote Creek.

Q. What is the character of the Coyote Creek; what sort of a stream is it?

A. It has a broad, deep channel, dry in summer.

Q. How deep, about?

A. It has bluff banks. I suppose from twelve to twenty feet—fifteen feet in some places.

Q. How wide, for example?

A. From one to two hundred yards in some places.

Q. Do you know the point, and, if so, what have been your means of knowledge, at which this northeastern corner of the rancho Santa Teresa touches the creek; or does it corner upon that?

A. It does. I made the survey, the final survey.

Q. You are entirely familiar with that point?

A. Yes, sir.

Q. At that point, what ranch, if any, is on the opposite side or eastern side of the creek?

118 A. The Yerba Buena.

Q. Passing down that creek until you come to the northwest corner of the Yerba Buena Rancho, and then following the creek until you come to the point to which the line of the fifteen hundred varas north of Pedro Chaboya's house would strike the creek; are you acquainted with the bank of the stream and the character of it in summer and winter?

A. At that point?

Q. Between these points, I mean.

A. It is a deep channel. I suppose one hundred yards in width, nearly; in some parts it may be narrower. The channel may be from twelve to fifteen feet in depth. There are some points where the water continues all summer.

Q. What is the character of the stream in winter?

A. It is very rapid

Q. Is it passable?

A. It is impassable after heavy rains.
Q. Is it angry or quiet?
A. It is very angry, very impassable when up and full.
Q. Is it easily crossed in summer? Could you drive a buggy down into it?
A. At no point except it has been dug down.
Q. Could you ride on horseback across it, except at particular points?

119 A. There may be some point where it might be crossed; but generally it would be difficult.
Q. Would it require a good or poor rider to cross it?
A. I should think it would be difficult to cross, except at the points where it has been cut down for the purpose of crossing.

Now we will offer the patent for the Pala Rancho to M'r Healey to point out with reference to the boundaries of the land he has described on the map attached thereto; said map being as follows:

Map of the Pala Rancho.

[Here follows map marked page 119.]

Q. Look at that map and describe to the jury how it is.
A. How it is situated with reference to those ranchos?
Q. Yes, sir.
Q. Would that tract as patented touch the Coyote Creek?
A. No, sir.
Q. How far would it be from it?
A. May be, two miles.
Q. How far?
A. Nearly two miles, I think.
Q. Do you know how much, or about how much, land was originally included in the map of the Palo Rancho, which has been shown to you—the old map on the whole tract? You say, I believe, that you made that survey, did you not?
120 A. Yes, sir. I should think there would be two leagues or upwards.

Cross-examination:

Q. What is you' business?
A. I am a surveyor.
Q. How long have you been engaged in the business in this country?
A. Something over fifteen years.

By plaintiffs' counsel:

Q. Suppose that instead of being a quarter of a league in square form it were half a league, would it or not include lot six in that way?
A. It would.
Q. I asked you as to the smaller quantity first—that is, a quarter of a league. Now I ask you as to a larger quantity; how would that be located, further east, south, or north?
A. Further south.
Q. Indeed, the whole league of land?
A. The whole.

Cross-examined:

Q. When did you first become familiar with the boundaries of these ranches?

A. I think in 1854—1853 or 1854.

Q. You don't know, then, what was understood as the boundaries of the Yerba Buena Rancho or Pala Rancho in 1850?

121 A. No, sir; I was not here.

Q. What you have testified to in regard to the boundaries of those ranchos and of the location of this land described in the deed to Eldridge and Jones is upon the hypothesis that the boundaries called for in that deed made in 1850 were the same boundaries described and laid down in the United States patents afterwards issued?

A. Yes, sir.

Q. How much is a quarter of a Mexican league?

A. A little over one thousand acres.

Q. How much in distance?

A. The length?

Q. The length of the line.

A. A little over one hundred chains; one hundred and four chains, or four hundred rods.

Q. In Mexican varas?

A. Twenty-five hundred varas; five thousand varas is a league square, I think.

Q. How much is a quarter of that?

A. A half-league in length on the sides, or rather a square with lines a half-league in length, include a quarter of a league of land.

Q. You say five thousand varas is a league square?

A. Five thousand varas.

Q. Then five thousand varas is a league?

A. Yes, sir.

122 Q. What is a quarter of that?

A. A half of a league—a half of a league on a side.

Q. I am asking of linear measurement. If a league is five thousand varas, a half of a league will be twenty-five hundred varas?

A. The half of a league on a side would give the quantity for one-half a league square.

Q. I am talking about linear measurement.

A. A quarter of a league in length is something over a half a mile.

Q. How many Mexican varas?

A. Twelve hundred and fifty.

Q. Now, then, a tract of land twelve hundred and fifty varas on the sides would be a tract of land a quarter of a league square, would it not?

A. Yes, sir; a quarter of a league square.

Q. Did not Pedro Chaboya live on this five-hundred-acre lot number six?

A. As near as my remembrance goes, the old house stands on lot six. I do not remember that I know of his living in it when it was there. It is gone now. It was there five or ten years ago. He has lived there a great many years, just south of the line of lot six. I don't know that I ever remember of his being on lot six.

A. Is that the house or not that you have assumed as Pedro Chaboya's house?

123 A. The old house I understand to be the old adobe house that has stood on lot six for a number of years.

Q. Now, then, this assumed line fifteen hundred varas north of his house is certainly more than a quarter of a league from his house?

A. Yes, sir; two hundred and fifty varas more than a quarter of a league.

Q. Then, a tract of land measuring a quarter of a league square might be located along there and would not take the whole of this lot you have just spoken of—lot six?

A. Yes, sir.

Q. Would it take a portion of it?

A. Yes, sir; a large portion of it.

Q. Now, you state to the jury that this fifteen hundred-vara line—that the land this side, if I understand you correctly, this side of that fifteen-hundred-vara line, north of the house of Pedro Chaboya—that the land on this side was known as the lands of the city of San José?

A. Yes, sir.

Q. Now, sir, is it not a fact that the lands beyond that fifteen-hundred-vara-line, covering the whole of the five-hundred-acre lot six, and extending clear down to the Santa Teresa Rancho, has been equally known as the lands of the city of San José?

(Question objected to as immaterial, and as contradicting the record evidence; which objection was overruled; to which ruling plaintiffs except.)

124 Q. Do you recollect the question?

A. Yes, sir; as to whether the lands south of lot six were not equally known as the lands of the pueblo as well as those on this side or north of the fifteen-hundred-vara line. They were, as far as my knowledge extends; they were surveyed in lots, of which lot number six was one.

Q. How far down did these five-hundred-acre lots of the pueblo go?

A. It is up stream. You mean to the south?

Q. Yes, sir; I stand corrected.

A. They extend to the line—to the present patent line of the Santa Teresa Rancho, I think, or north of there, and crossed the Coyote to the foot of the low hills, extended east of the patent line of the Pala Rancho, I think, embracing a portion of the Yerba Buena as patented, and part of Pala.

Q. Show the jury so that they will understand it how far they extended, as you understand it.

A. (The witness shows the jury on the diagram produced by witness and given in evidence by plaintiff, and showed to them that the five-hundred-acre lots included all the lands between the Ranchos San Juan Bautista, Santa Teresa, Yerba Buena, and Pala, as patented, and about two miles east of the Coyote, into the Yerba Buena, as patented.)

125 Taking the south line of the five-hundred-acre lots as being the lots or lands of the pueblo of San José, and locating the land described in this deed from Chaboya to Jones and Eldridge south of that line, it would not include any lands formerly claimed by Pedro Chaboya?

A. No, sir. I understand that the survey of the five-hundred-acre lots of the pueblo of San José covered all the lands claimed by Pedro Chaboya.

Q. Was there any other lots of the pueblo of San José, except the five-hundred-acre lots, to which that deed may have reference?

A. It may have reference to the smaller subdivisions—the city lots.

Q. Is it not the fact that the five-hundred-acre lots joined on to these other smaller subdivision—city lots?

A. I don't know. In some instances they embrace certain city lots; but the city lots may have been extended as additions since the survey of the pueblo lots. I know as a matter of fact that some of the city lots are embraced in the five-hundred-acre lots.

Q. Can you give the number?

A. I cannot give it; the map shows.

Q. Number ten?

A. Yes, sir; I think numbers ten and thirteen. There are maps that show them.

126 Q. Will you show the jury where the line is between the five-hundred-acre lots and the lots of the pueblo of San José—the smaller or municipal lots?

(The attention of witness was here called to the Thomas White or official map of the city of San José, put in evidence by plaintiffs.)

[Map of the city of San José surveyed in 1850.]

[Here follows map marked page 126.]

A. There appears to be a line of one of the lots, (describing on the map to the jury,) and the city lots appear to have stopped in the vicinity of it. That is lot ten, and is within the city limits. I should think that the city limits is the western line of five-hundred-acre lot number nine.

Q. What does this mean? (Pointing out to witness the dotted line in said White map, which [runs] through the corner of Reed's reservation, and extending eastwardly to the Coyote Creek.)

A. That is the north line of five-hundred-acre lot number ten.

Q. Now, will you show the jury, referring to the White map given in evidence already, where the original municipal lots of the city of San José were; how far south they extended; where they left off; and where the five-hundred-acre lots began?

A. I could not tell; it was before I made the survey here. I think it was Reed street for, the limit of one survey of town lots; then I

127 think the addition was made of the lots on five-hundred-acre lot ten; but that was before my time.

Q. Taking Reed street as being the line of the lots or lands of the city of San José, and as bounding this half league, the description of which you have heard read from the deed to Jones and Eldridge, would the land described in that deed extend down to or cover the five-hundred-acre lot six?

A. Disregarding the existence of the five-hundred-acre lots?

Q. Disregarding the existence of the five-hundred-acre lots, but taking Reed street as the line called for in that deed as the line of the pueblo lots or lands?

A. It would not; it would be located in there.

Q. Show the jury where it would be located.

The witness shows the jury, by referring to the diagram produced by him, that five-hundred-acre lot six would be to the south of a half league of land so located.

Q. When did you first become familiar with the boundaries of the Pala Rancho?

A. I don't remember what year; I think as long ago as 1856 or 1857.

Q. Was that before or after the boundary had been ascertained by the United States?

A. Yes, sir; before.

128 Q. What has been known and recognized as the western boundary of the Pala Rancho? How far is it from its present boundaries as fixed by the United States?

(Counsel for the plaintiffs objected to the question, on the ground that the plaintiff has established by the grant of the (Higuera) rancho, and

the patent issued by the Government of the United States under it, what those bounds are, and it is not competent to contradict that testimony by parol. And further, that we have shown by the petition of Pedro Cheboya, for the lands of which the lands in controversy are a part, to the governor of California, and by his petition of June 15th, 1857, for confirmation of that claim, what his lands or rancho were at that time; and that it was not competent for the defendants to introduce oral testimony to contradict those boundaries so established.

The court overruled the objection; to which ruling counsel for plaintiffs excepted.)

A. The west line of the Pala Rancho, as known and claimed before that rancho was surveyed by the United States, conformed very nearly to the present patent lines of that rancho.

Q. You stated last evening that you was acquainted with the Pala Rancho previous to any attempt to establish the boundaries by the Government of the United States; and you was asked the question

129 "Where the west boundary of that rancho then was, as it was then known and recognized, and how it corresponded with the western line as fixed by the patent of the United States?"

A. There were various opinions as to the boundaries. The settlers contended that it was nearer the foot-hills. I believe the claimant at that time contended, generally, that it was about as it was surveyed by the Government.

Q. The owners claimed it to be as subsequently surveyed by the Government?

A. I believe so. I don't know positively about that.

Q. The lines subsequently established by the Government are the patent lines?

A. Yes.

Q. That, I believe you said, is about two miles from Coyote Creek?

A. Yes, sir.

Q. What was there, then, to mark the course of the western boundary of that rancho as it was claimed by the Higueras and surveyed by the United States?

(The counsel for plaintiffs object to all this testimony, on the same ground as stated before.

The court overruled the objection; to which ruling exception was taken.)

Q. What natural object? What natural or artificial object? What was there to mark the southwestern corner?

130 A. I don't know that there was any natural object exactly at the corner of the surveys. The lines were established from the decree and papers in the case and instructions from the Surveyor-General of the United States to his deputy, and according to his best judgment. I don't remember of any natural object.

Q. Were there any trees or stumps, stakes or houses?

A. The corner is a tree, or it was then; it is a stump now. I believe it was a tree at the time the survey was made.

Q. A tree then; a stump now?

A. I believe so.

Q. Do you know of any marks on that tree or stump?

A. No, sir, except those put there by the surveyor. I don't know of any old landmarks existing. I don't remember of the tree when standing.

Q. What did you understand, or what did you mean, in talking about

a quarter of a league square? Did you mean a piece of land measuring a quarter of a league on each side?

A. I don't know as I made any such reference to that.

Q. Well, a half a league square. Did you mean a tract of land measuring half a league on each side, or the half of the contents of a league square?

131 A. I meant a half a league on each side.

Q. Taking Reed street and the continuation thereof as far as the line of the Pala or Higuera Rancho for the northern boundary of the land described in the deed from Chaboya to Jones and Eldridge, the Rancho of Pala, or Higuera Rancho, and Yerba Buena, as the eastern boundary, would the description in said deed cover any portion of five-hundred-acre lot number six?

Q. (To witness.) Do you recollect the question? I will repeat it: Taking the continuation of Reed street as the northern boundary of the land described in the deed from Pedro Chaboya to Jones and Eldridge and the west line of the Pala Rancho, as the line was claimed by the Higueros and surveyed by the United States—taking those as the boundaries, would the land described in that deed take in any part of five-hundred-acre lot six?

A. It would not.

The COURT. Q. What do you assume by the street there—Reed street?

M'r PECKHAM. A. It is the southern boundary of the municipal lots of the Pueblo of San José, as we understand; we distinguish these municipal lots from the five-hundred-acre lots.

Q. (To witness.) How does the course of Reed street compare with the course of the northern line of the five-hundred-acre lot six?

132 A. It is nearly parallel.

Q. About what is the distance between Reed street and the northern line of five-hundred-acre lot six?

A. About a mile and a half.

Q. Look again at that "White map" shown to yesterday; look at this map shown you yesterday—the map of the city of San José and of Reed's addition, and tell us if you are familiar with the city of San José; and if so, what that part of the map is called lying south of Reed street?

A. Reed's addition.

Q. It is called Reed's addition?

A. Yes, sir.

M'r MATHEWS. Q. You mean the land there—not the map?

PECKHAM. A. Of course I do.

Q. That part, then, of the city of San José shown on this map, south of Reed street, is known as Reed's addition?

A. Yes, sir.

Q. What is the distance between the south line of Reed's addition and the northern line of the five-hundred-acre lot number six?

A. About five-eighths of a mile.

Q. What proportion of a Spanish league would that be?

133 A. It is a little more than five-eighths of a mile; it would be about fifteen hundred varas, or some over one-fourth of a league.

Q. How does the southern line of Reed's addition compare with the course of Reed street?

A. It is nearly parallel.

Q. Tell us how a continuation in an easterly direction of the southerly

line of Reed's addition would run; whether a continuation of that line easterly would strike the line of the Pala Rancho?

A. It would.

Q. Taking the line last described—a continuation of the southern line of Reed's addition, and the line of the Pala Rancho, as the eastern boundary, and locating this land described in the deed from Pedro Chaboya to Jones and Eldridge, state to the jury whether, if that land was located with those boundaries, it would include any portion of five-hundred-acre lot six; and, if so, what portion of it?

A. It would not include any portion of it.

Q. This five-hundred-acre lot number six I understand to be the same that you spoke of yesterday?

A. Yes, sir.

Q. Were there any of those five-hundred-acre lots on the east side of five-hundred-acre lot six?

134 A. There were.

Q. How many? Or I will put the question in this form: how far was it from five-hundred-acre lot six to the eastern line of the five-hundred-acre lots of the pueblo of San José?

A. I think they extend two or three miles to the eastward of number six.

Q. How far across the Coyote Creek eastward?

A. Well, two or three miles.

Q. About three miles across the Coyote Creek?

A. Yes, sir.

Q. How did that line—the eastern line of the five-hundred-acre lots—compare with the western line of the Pala Rancho, as claimed by the Higueras and afterwards established by the United States?

A. I think they extended two or three miles to the eastward of the line, so as to include part of that rancho. The rancho, when it was surveyed, embraced part of several lots?

Q. It embraced part of several lots?

A. Yes, sir.

Q. When you first knew the land, in 1857, who was in possession, or, rather, who claimed the land to the eastward of the five-hundred-acre lots and south of the Pala Rancho?

A. That would be a portion of the Yerba Buena Rancho.

135 Q. Well, who claimed it?

A. It was claimed by settlers, squatters, who claimed it as Government land. It was also claimed by Chaboya, but he had no possession of it.

Q. What Chaboya?

A. Antonio.

Q. But he had no possession?

A. No, sir.

Q. State, if you know—if you do not know you won't answer the question—what was understood by people generally of San José and vicinity, prior to 1857 or 1858, as to Antonio Chaboya's west boundary-line.

(Counsel for plaintiffs objected to the question as incompetent, because the plaintiffs having shown the boundaries of the rancho of Antonio Chaboya by the espediente and grant and the patent thereof, it was not competent to vary or contradict the same by general reputation.

The court sustained the objection. Exceptions taken by defendants.)

Q. You were speaking of the character of that Coyote Creek and its bank. Is it not a fact that that creek has shifting banks?

A. Yes, sir.

Q. Washes in upon one side and washes out on the other—every freshet that comes?

136 A. Every freshet that comes cuts away portions of the bank every winter, making it wider in some places.

Q. Is it not a fact that there are always places where people on horseback and cattle pass down those banks into the stream and out on the other side?

A. There are places they can do so, where it has been cut down for that purpose. I don't know of any natural places where they can do it.

Q. How was it formerly when you first knew it?

A. Well, the banks were not so precipitous, and the channel has evidently been deepening and widening by the action of the waters every season.

Redirect examination.

By M'r Mathews:

Q. You say that running a line eastward through Reed street—a continuation of Reed street to the Pala Rancho—and locating a tract of land by that line a quarter of a league square, that is, a quarter of a league in extent, or half of a league, with rectangular lines bordering upon the Pala Rancho on the east and on this line on the north, would include no portion of lot six. It would not in any event bound upon the lands of Pedro Chaboya, or on any lands that he claimed, to your knowledge?

A. No, sir; except where it touches the Coyote.

137 Q. Well, about the west?

A. It might do so on the west.

Q. It would not to the south?

A. No, sir.

Q. Would it touch on the east the Yerba Buena Rancho?

A. I should say it would. The line of the Yerba Buena runs northeasterly; so, if you assume that to be on the south——

Q. Point out to the jury what would be the location.

(The witness points out what would be the boundaries, as follows: the line of five-hundred-acre lot ten extended eastward to the west line of the Pala Rancho on the north, the Pala Rancho on the east, the Yerba Buena Rancho on the southeast and south, and stated that it would extend west as far as the Coyote, and perhaps extend to the west of the Coyote.)

Q. Taking the southern boundary of Reed's addition and extending that across to the Pala Rancho and locate it, in what form it would be—in what shape would the boundaries be?

A. It would have to be twice or three times as wide to reach from the Coyote to there. There would be no room to locate a square half league; it would be too narrow—not square.

Q. It would bound, then, upon the Yerba Buena?

138 A. Yes.

Q. Tell the jury who was owning the Yerba Buena Rancho.

A. Antonio Chaboya.

Q. Tell the jury if that is the only name he claimed under.

A. Yes, sir.

Q. Who claimed the Pala Rancho?

A. Higuera.

Q. Was it Joaquin, or whom?

A. It was—I don't remember his name.

Q. Was not Joaquin one of the heirs who succeeded José?
A. Yes, sir.
Q. One of his sons?
A. Yes, sir.
Q. This lot six, what is the character of the boundaries; are they distinctly or loosely bounded; are they well known?
A. It is well known.
Q. Are the boundaries specific?
A. Yes, sir; they have been established for many years.
Q. About what quantity is in that tract?
A. A little over three hundred acres; maybe three hundred and fifty or three hundred and sixty.

Q. Assuming the lands of Pedro Chaboya to be bounded by a
139 line fifteen hundred varas north of his house, and the Coyote as the eastern boundary, and lay off a tract to the west of the Coyote and south of the line of fifteen hundred varas, containing half a league or quarter of a league, bounded by rectangular lines, what would be the boundaries of that tract of land, and what the southern and western boundaries, assuming this to be the rancho or lands of Pedro Chaboya, (showing upon the diagram made by the witness the lands contained between the Coyote on the east, the line fifteen hundred varas from Chaboya's house on the north, and the rancho of San Juan Bautista or the Narvaez Rancho on the west, and the San Teresa Rancho, or the rancho of the Bernales, on the south.)
A. It would [be] bounded on Pedro Chaboya's land.
Q. Assuming this line of Reed's addition as the line of the pueblo lots or lands—the southern line of Reed's addition to be the northern line of the tract half a league square, and then survey to the south a square of a half a league—would that tract of land include any of the lot six?
A. It would.
Q. And assuming the same with regard to Reed street, would it?
A. It would not.

M'r Houghton:

Q. Which do you mean; the northern line of Reed's addition?
140 A. The southern line of Reed's addition.

M'r Mathews:

Q. Now, surveying the tract of land so as to bound upon the Arroyo Coyote, this line—the south line of Reed's addition—upon the north, and then take a half a league of land in that locality, and would it or would it not include lot six, or any part of it?
A. I think it would include it.

M'r Houghton:

Q. The whole of it?
A. Yes, sir.

M'r Mathews:

Q. Well, suppose it was a quarter of a league?
A. It would not.
Q. Any part of it?
A. I do not think it would, any part of it.
Q. What is a quarter of a league?
A. A quarter of a league?
Q. Yes; how much land is there between lot six and Reed's addition? Would it not be obliged to include it?

A. Well, it would.
Q. Would it not necessarily?
A. There may be only three-fourths of a mile.
Q. Look at this diagram, and see whether it would include it.
A. Yes, sir.
Q. (Showing.) Look at that, and say whether you have seen that before?
A. It is a copy of a sketch made by me.
141 (Diagram marked "Ex. Healey"—see Exhibit E, p. 239, attached hereto.)
Q. Did you make the copy? Do you recognize the copy?
A. I think I did.
Q. Where was that made, when was it made, and when and where was it used?
A. It was made to be used in the Chaboya case, I think, at the time that it was pending before the United States district court.
Q. Do you recollect whether you made that for the claimant or for the Government?
A. I think for the claimant.
Q. Pedro Chaboya?
A. Yes, sir.
Q. To exhibit to the court the boundaries of that tract?
A. Yes, sir.
Q. Say whether the location of those ranchos are substantially or otherwise the same as you located them on the diagram.
A. They are the same.
Q. I see you have marked down the city limits. What was that for? Do you recollect?
A. I do not remember for what purpose I was required to locate them particularly.
Q. I see you have marked one league from the plaza.
A. One league from the church.
142 Q. What was that for?
A. I do not remember particularly what the object was in laying it down on this map.
Q. Do you recollect the date you filed this?
A. No, I do not; 1862, I believe.
Q. M'r Healey, suppose you take the northern line of Pedro Chaboya Rancho, fifteen hundred varas from his house, and then project that line across the Coyote Creek until it strikes Pala Rancho, what sort of a line would be between the Chaboya grant and this line to the north? What shape would that line take in—whether wide, or how?
A. It would be very narrow—long and narrow.
Q. Would that include a half league of land?
A. I think it would not.
Q. Can you tell about how much it would include?
A. Well, it would depend very much upon the course and direction of that line drawn fifteen hundred varas from the house.
Q. Well, suppose it was drawn at a right angle to the line exactly fifteen hundred varas; that is, locating the line fifteen hundred varas from the house, then running the line in right angles so as to strike the Coyote, and at right angles with the San Juan Bautista?
A. It would contain seven or eight hundred acres.
143 Q. And it would not include a half league or a quarter of a league of land?
A. No, sir.

Q. And even a quarter of a league, half would have to be on one side of the Coyote and the rest on the other?

A. Yes, sir.

Q. In any event, locating it upon this side, would it be bounded upon the rancho of Antonio or Pedro Chaboya?

A. Locating the course in this manner it would be bounded upon the lands of Antonio Chaboya.

Q. What relation was he to Pedro?

A. His brother.

Q. Do you know which was the older?

A. I don't. I think Pedro is the elder; I am not certain, however.

Q. Are you familiar with the calls in the deed of Pedro Chaboya to Jones and Eldridge?

A. I have read it, and also read the description of the land in the espediente of the land towards the Mission of San José.

Q. Is this land mentioned in that deed of Jones and Eldridge located so as to fall on the lands described in this first espediente of the Mission of San José upon that rancho?

A. No, sir.

Q. That cannot be done?

144 A. No, sir.

Q. Is it possible to locate the rancho of Pedro Chaboya, as it is described in his petition of 1854 or in 1857, so as to locate that land upon the land of the Mission of San José?

A. No, sir.

Q. It is not?

A. No, sir.

Cross-examination by M'r Peckham:

Q. You explained the location of the lines of these various ranchos. What are these green lines (showing on the map) "E," Charles T. Healey?

A. I think they represent a league each way from the "jusgada," in the center of this town of San José.

Q. A line drawn in each direction, so that the lines include four square leagues?

A. Yes, sir.

Q. What tract was that intended to represent? The pueblo; four square leagues?

A. Well, I do not know; I don't remember what the object was.

Q. Was it not to represent four square leagues claimed as the four square leagues of the pueblo?

A. It is possible; I do not remember.

Q. You say it does represent the four square leagues surrounding the Pueblo of San José?

145 A. Yes, sir.

Q. Would Pedro Chaboya's old house fall within those lines?

A. Yes, sir. Then another measurement was made, showing where the land commissioners measured down the Monterey road.

Q. This line run north, south, east, and west?

A. Yes, sir. I think the line measuring one league south of the jusgada does not include the house of Pedro Chaboya, measuring south-east.

By M'r Mathews:

Q. Did you know Antonio Suñol?

A. Yes, sir.
Q. Is he living or dead?
A. Yes, sir; he is dead.
Q. Measuring from Reed street a half a league of land south, in rectangular lines, bounded by the Coyote, would it or would it not include lot six?
A. A half a league; yes, sir.
M'r HOUGHTON. That is, a tract containing an area of half a league?
The WITNESS. There is a little piece of paper would assist me in making that answer, if you will let me look at it. (Witness looks at the paper.) It would include it, I think, all of it, or very nearly all of it.
Q. M'r Healey, do you know anything of a well or posa near there?
146 A. I don't remember.
Q. Do you know anything about a watering-place there?
A. I do not remember distinctly.
Q. Do you know who occupies the land south of Pedro Chaboya; who lives there, and who has done so for some years?
A. South of where he resides?
Q. Pedro Chaboya—his location. (Counsel reads the description in the complaint.)
A. I do not know; I know the boundaries named.
Q. They are in accordance with the description?
A. Yes, sir.
Counsel for plaintiff offers in evidence the deposition of Antonio Suñol.
M'r PECKHAM. The deposition offered is the deposition taken, not in this case, but it appears to be a deposition of Antonio Suñol given in the district court of the United States for the northern district of California in the case between the United States and Pedro Chaboya. We object to the admissibility of the deposition as evidence in this case, that it is res inter alias acta and hearsay.
The court overruled the objection; to which exception was taken.
147 M'r Mathews reads the deposition as follows. (See exhibit marked "H," p. , attached hereto.)
Counsel for defendant objects *objects* to it as hearsay. The same ruling, and exception.
Here the plaintiffs rested.

JAMES W. WEEKS, called for defendants, sworn and examined.

By M'r Peckham:

Question. M'r Weeks, how long have you resided in this country?
Answer. Since the year 1832.
Q. What position did you hold in the government of San José in the years 1846 and 1847–1848?
A. I was clerk for D'r Stakes at the time, and I have also been alcalde and interpreter, and held other offices occasionally.
Q. Do you know anything about the western boundary of the rancho Yerba Buena, the Socayre, as it was claimed by Antonio Chaboya, prior to the year 1850; and, if so, how do you know the boundaries?
(Plaintiffs object to it on the same grounds, that it tends to contradict the record evidence.
The court overruled the objection. Exception taken.)
A. I was called upon by Captain Burton to go and assist in surveying the land.

Q. Who was he?

A. Alcalde Burton, of San José.

148 Q. When was that?

A. In 1846 or 1847.

Q. What survey was that?

A. It was called the Holton survey.

Q. Of what?

A. Of the pueblo lots of the city of San José.

Q. The five-hundred-acre lots?

A. Yes, sir; when it was cut up into five-hundred-acre lots. I was with him from the commencement of the survey.

Q. Just state your story.

A. I drew a small sketch of the same to help me describe it. We went from the pueblo to this place of M'r Reed's. We went and struck the Coches line, and from there to the San Juan Bautista and to the Santa Teresa; and from the live-oak grove we went a straight line towards Antonio Chaboya rancho, towards that which is called the Yerba Buena, and there he himself showed us the document (the Figueroa permit was here referred to by the witness) which you had there, a permit from the governor, and also a map which I interpreted to Captain Burton, and from there we took a line along the rancho to the Higuera or Pala Rancho.

Q. Who showed you the document?

A. The people were called upon by Captain Burton to bring the documents to show their lines—where the lands were measured off;

149 and Pedro and Antonio Chaboya brought theirs, and the Figueroa document was brought by Antonio Chaboya.

Q. Antonio Chaboya brought his on the ground to show you?

A. Yes, sir.

Q. Do you think you would recognize the document if you saw it?

A. I do.

Q. (Showing.) Here is the original paper filed before the land commissioners.

A. That was not the document he produced to us.

Q. Look at all those. There are several documents altogether. May be you will find it among those.

A. That may be one of the documents, (referring to one, the Figueroa document;) but I am not positive, it is so long ago.

Q. Well, what did he do, if anything, towards pointing out his lines on his rancho as he claimed them?

A. He showed us the lines, and was perfectly satisfied, apparently, about the way they were run.

Q. Well, how did he show them? Describe it to the jury.

A. He told Captain Burton where his lines were. Captain Burton asked him to show his lines, and they were surveyed accordingly.

150 Q. What survey was that?

A. The Holton survey of the five-hundred-acre lots.

Q. Then, I understand you to say that the line of the five-hundred-acre lots was surveyed by Holton according to the lines Antonio Chaboya pointed out to you on the ground?

A. Yes, sir; he was perfectly satisfied at that time at the way they were surveyed.

Q. How far was that line from the Coyote Creek, more or less?

A. I should suppose, from the Coyote Creek more than a mile and a half. That is my idea, as near as I can calculate at present.

M'r MATHEWS. Q. What is that paper?

A. It is a diagram that the witness has prepared himself.

Q. Now or heretofore?

The WITNESS. A. For the purpose of explaining my testimony.

Q. Now or heretofore?

A. I made it yesterday.

Q. Well, for the purpose of a diagram I have no objection to it.

M'r PECKHAM. Where was this oak grove that you speak of, that you went to?

A. On the east side of the Coyote.

Q. Whereabouts? Can you describe it?

A. I can by looking at this, (referring to his diagram.)

151 Q. How is it by reference to the Lagrinias Hills?

A. Well, the hills lie southeast, I think, of it.

Q. Well, when you say you went from the oak grove, do you mean to say that was one of the lines you run?

A. Yes, sir; there was some he did not measure. Burton claimed a tract of land there, to the east of Antonio Chaboya. He left sufficient land to cover a tract which he claimed himself.

Q. You went around there surveying out the land he, Burton, claimed himself?

A. Yes, sir; he claimed that as his own ranch—Captain Burton.

Q. I wish you would explain that to the jury from the paper that you have got there.

M'r MATHEWS. What has that land of Captain Burton to do with the case?

M'r PECKHAM. I am asking him to show to the jury, by means of that diagram, the line they ran on that ground. That has nothing to do with Captain Burton's claim.

The COURT. Of course that has nothing to do with Captain Burton's claim; but that seems to be the question.

M'r PECKHAM. The witness stated that he went around by the way of Captain Burton's land.

M'r MATHEWS. If he says Antonio Chaboya was present when it was done——

152 The WITNESS. He was present when we got down to his lands. He came out of his house when we got near there, and went all around the lines with the surveyor.

The COURT. For what purpose?

A. He pointed out the lines and helped with the chain.

M'r PECKHAM. Q. To survey Captain Burton's land?

A. Captain Burton's land was not all surveyed.

M'r MATHEWS. That is a matter with which Antonio Chaboya had nothing to do, your honor.

M'r PECKHAM. We understand that Antonio came down and showed his land, as did all the others.

Q. How far was Antonio Chaboya's corner—the corner this way, towards the Coyote Creek—from the corner of the Pala Rancho?

A. I do not remember, sir.

Cross-examination by M'r Mathews:

Q. You say you went on that ground to assist Captain Burton in the survey of the five-hundred-acre lots, and at the time you called upon Antonio Chaboya, Captain Burton and you, did Captain Burton or you tell him that Captain Burton was claiming that ranch?

153 A. It was well known.

Q. I do not ask you that question. I ask you if Captain Burton or you did not tell him that he was claiming that ranch?

A. I do not recollect whether I did or not.
Q. Do you know you did not?
A. I don't know whether I did or not.
Q. Did you have any conversation on that subject?
A. No, sir; I do not recollect that I did.
Q. Did he point out the Roblar?
A. Which Roblar?
Q. You say he pointed it out to you.
A. I say we commenced chaining from the oak grove.
Q. How did you come to get to that grove?
A. I was shown there by Captain Burton and the surveyor.
Q. Did Chaboya show it to you?
A. Don't I tell you Chaboya came out of his house when we got near there?
Q. Did he show it to you?
A. No, sir.
Q. Was Chaboya with you at the time you run that line?
A. I said before that he came out of his house when we got near his house.
Q. Which way were you running?
A. About east.
154 Q. Which way had you been surveying before he saw you?
A. We commenced at this oak grove, (showing,) and went around over towards Chaboya's house.
Q. You surveyed by that point?
A. Yes, sir.
Q. Did you go back and survey it again after you met Antonio?
A. Not that I recollect.
Q. Where did Chaboya live?
A. At the Socayre.
Q. Did he live at his old adobe at that time?
A. He lived close to where we made the corner.
Q. Did he live in the old house at which he died, or did he live at the old house in the plains?
A. I don't know, more than the man in the moon, where he lived.
Q. Where did he live at that time?
A. Close by where we made the corner.
Q. Where was that?
A. In the Socayre.
Q. Where was that?
A. A place near the Yerba Buena.
Q. Where is the Yerba Buena?
A. A place to the north side of the Coyote.
Q. Cannot you locate the house you speak of?
A. I can by this, (referring to a paper.)
155 Q. Take the diagram and point it out.
Q. Is that on the north side of the ranch or on the south side of what is called the Pala?
A. It is the north side of the rancho of Yerba Buena, what I know as the Yerba Bueno rancho.
Q. Is it near the Pala, or distant from the Pala?
A. The witness explains on the diagram where it was.
Q. How many houses did you know Chaboya to have?
A. Two or three houses.
Q. Where were they?
A. (The witness points out on the map the location of the houses.)

Q. How far from the Higuera Rancho; one hundred yards or five miles?

A. I don't recollect.

Q. Was the distance far or near?

A. I cannot recollect. I cannot say where that corner is.

Q. Do you know where there is an old abobe house, down on the plain, in which he lived?

A. Yes, sir.

Q. Did Antonio ever live in that?

A. I don't know.

Q. Did you ever know him to have but one residence?

A. Yes, sir.

Q. On that rancho?

156 A. Yes, sir.

Q. Whereabouts?

A. His first house was up at the Yerba Buena, where he sowed wheat.

Q. Where was the other?

A. Afterwards he built a house further down on the plain.

Q. Do you know where his family lived five years ago?

A. No, sir. I have been a long time away.

Q. Have you not been over there recently?

A. No, sir.

Q. Did you not go over last spring?

A. No, sir.

Q. Did you not go with the counsel for defendants in this case?

A. No.

Q. To point out those boundaries?

A. No.

Q. How far were those houses apart?

A. I should think about one-fourth of a mile, as near as I can judge. I have never measured it.

Q. You never knew but two houses?

A. I knew of another house.

Q. Was it at one of these two houses at which you found him at the time you ran the lines?

A. We did not find him in the house; he came out.

Q. Was he living in one of these two houses at the time?

157 A. He was living in it at that time.

Q. Was it one of those two houses?

A. It was not the house; this was the other one. I don't know whether it was any house at all. I did not go there to see.

Q. Which of those two houses was the one he lived in in 1833?

A. The one this way.

Q. Was not that near the arroyo or cañon near his house?

A. It was near a place called Silver Creek.

Q. It runs across the country; it is not east of his house?

A. No; it runs southeast of his house.

Q. Does it not run northwest, not southeast?

A. Yes.

Q. Was the house to the east or west of that creek?

A. The house was to the northwest of that creek.

Q. Then it must have been down in the plain.

A. It was not in the plain; it was at the hills.

Q. Was not that almost on the boundary of the Pala Rancho?

A. I think it might have been somewhere near the boundary of the Pala Rancho.

Q. Then you came from the south, and did not see him (Chaboya) until you had run the whole length of that land?

158 A. I tell you he came out of his house as we were coming up, and brought us his documents and papers.

Q. I want to know whether, after he came out and met you, which was near the northern boundaries of his land, you again ran that line that you had previously ran?

A. I say I don't recollect of running more than one line, and that was here. (Witness shows on diagram.)

Q. Did you then go on to the north?

A. I traced the line out for you two or three times. I also traced that paper before I came here, so that you would understand.

Q. After you left the house of Antonio Chaboya, which way did you go, towards the north, or did you go back on the line?

A. We went along the line of the Pala Rancho till we got to a place called Aguage.

Q. Where is that?

A. The western boundary of the Pala.

Q. Which way did you go from there?

A. Down to the Milpitas.

Q. Still going further from this rancho of Antonio Chaboya's?

A. Yes, sir.

Q. You do not remember whether Burton informed him that he was claiming part of that country?

159 A. He never did, that I knew of.

Q. Did you inform him?

A. No, sir.

JOAQUIN HIGUERA, called for defendant; sworn and examined by M'r Peckham.

Question. What is your name?

Answer. Joaquin Higuera.

Q. You are the son of whom?

A. My father, Joaquin Higuera.

Q. Is your father the same Joaquin Higuera whose name has been mentioned as the owner of the Pala Rancho?

A. Yes, sir.

Q. State to the jury what the western boundary of that Pala Rancho was.

(Objected to on the same ground as heretofore; the same ruling and exception.)

A. It is on the other side of Chaboya's house.

Q. What Chaboya?

A. Antonio Chaboya's house.

Q. What was there at the corner towards Antonio's house?

A. At the corner of the ranch?

Q. The landmark of the Rancho Pala.

A. Yes; there was a tree there with a mark of the Ranch' Pala on it.

Q. On which corner of the Rancho Pala was that?

160 A. That was on the south side.

Q. The corner on the south side; towards the Coyote or towards the hills?

A. Nearest the hills.

Q. What was there on the corner—south corner, nearest the Coyote?

A. I don't understand what you want to say to me.

Q. I want to know what there was as a landmark at the southwest corner of the Rancho de Pala.

A. Didn't I tell you a tree that was there that had a mark on it?

Q. I think you misunderstood the former question. There is a corner on the plain and another in the hills.

A. Yes, sir.

Q. Which corner is it that you are talking about that you say there is a tree on, the one in the plain or one in the hills?

A. The one that is down below the hills, from uphill, down this way, towards the south.

Q. Where did the west line of that rancho run; towards that tree or towards the hills?

A. I don't understand what you mean by west.

The INTERPRETER. Shall I explain to him what I mean by west?

Yes, sir.

161 WITNESS. (After explanation.) It runs to the north, towards the Rancho Berryessa.

Q. How far was that line, more or less, from the Coyote Creek?

A. From the tree to the Coyote?

Q. Yes.

A. I cannot know how much it might be.

Q. Well, more or less?

A. Well, I think it might be a mile or more; cannot say exactly how much it might be. It might be a mile; perhaps a little more or less.

Q. How long is it since that tree was made a corner of that rancho or a landmark?

A. When they went to measure the ranch.

Q. When who went to measure the ranch?

A. Pedro Chaboya, when he was judge, and others that went with him.

Q. Do you know what year that was?

A. No, sir.

Q. Was it in Mexican times, or after the Americans took the country?

A. In the time of the government of Mexico.

Q. Do you know where the corner was established by the United States surveyors in the surveying of the Pala Rancho, and how far it is from the same tree?

A. They were going around there, but I did not notice them. I did not want anything with them. I think they went and measured from there.

162 Q. About being the same tree; do you know anything about that?

A. That tree of the ranch is further inside; and the one that they say is further this way. My father's is further to the south; that which they put is further in.

Q. What do you mean by "further this way;" further towards the Coyote?

A. No; they put it further towards the side of the Rancho Berryessa, further towards the north.

Q. How long did you live on that Pala Rancho?

A. It was many years. I was very small at that time.

Q. Do you know the boundary of Antonio Chaboya's rancho—the Yerba Buena, as it was known before the present times, before the time of the United States land commission?

A. I knew it very well in the time of the government of Mexico; but I don't know how it may be now.

Q. Tell us where they were.

A. He had in the time of the government of Mexico the land in the capacity or quality of a loan.

Q. Had what?

A. He had the rancho—this rancho—without any right to interfere with the cattle of the pueblo.

163 What was the boundaries of that rancho?

(Objected to until the nature of his knowledge is shown; which was overruled by the court; to which ruling plaintiff excepted.)

Q. What were the boundaries?

A. The line on the side to the south was where there was a very high hill, like the hill of San Felippe.

By the court. The witness cannot determine what the boundaries of a tract of land are. The court determines that upon the facts, while the witness may locate them.

COURT. How is the court to know it?

COUNSEL. A. By the evidence given before the court.

COUNSEL. The witness states that he knew the boundaries of the Rancho Yerba Buena, as understood and recognized in olden times, and we propose to show what they were.

MR MATHEWS. Without showing his means of knowledge, we shall object to that question.

Court sustains the objection; to which ruling exception was taken by defendants.

Q. Do you know the boundaries of the Rancho Yerba Buena, claimed by Antonio Chaboya?

A. Prior to the organization of the United States land commission, I knew them. I knew them in former times, but do not know how they are since.

164 (The plaintiffs object particularly as to what the western boundary was.

The court sustained the objection on that account, and refused to permit witness to testify as to what the lines were formerly. Exceptions taken by defendants.)

Q. Where were the boundaries of the Rancho Yerba Buena prior to the time of the country being settled by the Americans?

(Plaintiffs objected that it is a mere evasion. It has been determined by the documents offered in evidence, from the espediente and his patent, or from one or the other, what his boundaries are, and fixed the western boundary of the rancho.

Your honor will find that the espediente of 1840 is as definite as the patent itself.)

Q. Are they offered in evidence?

A. Yes, sir; they are in evidence.

(Counsel reads a paper.)

Q. What is that you read now?

A. It is the original espediente in evidence.

Q. Of the Yerba Buena Rancho?

A. Yes, sir; I suppose that was a translation of that document.

Q. Do you recollect the time John Burton was alcalde?

A. No. The Old Captain, as he was called, do you mean?

Q. I suppose that was the title he went by.

165 (It was admitted that John Burton and the Old Captain were one and the same person.)

Q. Do you know him?

A. Yes; I remember that time when the Old Captain was alcalde. I don't know his name exactly.

Q. Do you know of any survey or measurement of the lines of the Antonio Chaboya Rancho, between his rancho and the pueblo lines, at the time he was alcalde?

A. Yes, sir; I know.

Q. What do you know about it?

(Objected to on the ground that the survey was irrelevant; which objection is sustained by the court; to which ruling the defendants excepted.)

M'r PECKHAM. We propose to show by this witness, if the court pleases, that in 1847 John Burton, alcalde, Weeks as secretary, and Hulton, a surveyor, and others, came out to make a survey of the line between the rancho of Yerba Buena, then claimed and in possession of Antonio Chaboya, and the pueblo lands of San José, being the same survey and the same running of lines as testified to by Weeks; that they called on Antonio Chaboya to point out what he claimed as the boundaries of his rancho dividing his lands from the Pueblo of San José; that he went and took his stand upon the land, and pointed out the
166 boundaries, and showed them where the corners were, and that they ran that boundary according to the direction and claim of Antonio Chaboya on the ground. We offer, further, to prove that since the pendency of this suit the witness has been on the ground with M'r Healey and myself, and pointed out that land to M'r Healey; and then we propose to show that that line is two miles east of the Coyote Creek.

(Objected to by plaintiffs; which objection was sustained by the court; to which ruling defendants then and there excepted.)

And the court then stated to counsel of defendants: It is for the court to construe the espedientes of the rancho of Antonio Chaboya, and from those and other evidences of title, together with the patent, to declare what were the boundaries of his rancho. Where they are upon the ground is for the jury; and you may show by this or by any other witness where any of the objects called for in the espedientes or patent are located.

M'r PECKHAM. We now propose to prove that Antonio Chaboya never did claim, prior to the organization of the land commission, that his rancho, Yerba Buena, extended to within two miles of the Coyote Creek.

(Plaintiffs made same objection, which is sustained; to which ruling defendants except.)

The COURT. The court will decide what the west boundaries of the land were.

167 Judge DANIELS called for defendants:

Question. How long have you been living in San José?

Answer. I arrived in the spring of 1846.

Q. Was you living in San José at the time the city was originally run off into blocks and lots?

A. It was a town in the first place.

Q. Was you here at that time?

A. I was; before.

Q. Who did that?

A. William Campbell was surveyor.

Q. When was that done?

A. In 1847; I think in August—no, it must have been before that.

Q. Do you know what the southern boundaries of the town are as it was surveyed by Campbell in 1847?

A. I think I could point it out if I was up there.

Q. Can you point it out with reference to this map of the city? (White's map shown witness.)

A. I don't know anything about the map. There was an embarcadero road that runs through here.

(Plaintiffs object to this as irrelevant, because the petition of Pedro Chaboya to Alvarado, and his petition to the United States district court for a confirmation of the ranch named therein bounds his ranch on the north by a line fifteen hundred varas from his house, and any lands north of that are irrelevant to the contest, or proofs in relation to that are irrelevant to this court; which objection was by the court overruled; to which ruling the plaintiffs excepted.)

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Q. I was asking you if you could by the use of that map tell us about where the southern boundary of William Campbell's survey was that he made in 1847.

The COURT. The calls of the deed give those. You can examine him as to the location of that line; not in reference to it otherwise.

COUNSEL. We have already proved that there was two classes of lots of the Pueblo San José—the five-hundred-acre lots and the municipal lots—and now we propose to show where these two classes of lots come together; where the one left off and the other commenced.

M'r MATHEWS. What is the question, M'r Peckham?

A. I want to find out how far south the original survey of M'r Campbell went.

M'r MATHEWS. We object.

Which objection was overruled, and plaintiffs except.

A. According to the plan here laid down this is the limit. (The witness points out Reed street, as shown upon the White map, as the line of the lots surveyed by Campbell, 1847.)

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Q. Then this tract south of the Reed line was five-hundred-acre lot number ten?

A. Yes, sir.

Q. It was surveyed into lots by whom?

A. By men for M'r Reed.

Q. Do you know when it was done?

A. No, sir, I don't. About 1849 or 1850.

Q. That, then, was one of the original five-hundred-acre lots?

A. Yes, sir.

Q. Surveyed up into lots for M'r Reed?

A. Yes.

Cross-examination:

Q. When was this survey for Reed?

A. I cannot recollect.

Q. Was it prior to 1850?

A. I think it was before. I could not be certain as to the time, but I think it was before.

Q. That was a division of that tract into building-lots in the same general way that the rest of the city was divided?

A. Yes, sir. The streets were made to run parallel with the rest of the town.

The defendants gave in evidence a petition of the mayor and common council of the city of San José, filed before the United States land commission on the 14th day of June, 1852, praying for a confirmation to the city of San José.

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It was admitted that that included the land in controversy in this case, the same being as follows:

Petition of mayor and common council of San José, 14th June, 1852.

STATE OF CALIFORNIA, *ss:*

To the United State commissioners for the adjudication of private land-claims in the State of California:

The petition of the mayor and common council of the city of San José respectfully showeth, that on the twenty-ninth of November, in the year 1777, there was established in what is now known as the valley of San José, within the limits of the present county of Santa Clara, in the State of California, by Señor Don Philip Nere, then the governor of the Province of Upper California, thenceforth known as the Pueblo of San José de Guadalupe; that at the time of the establisment of said pueblo Upper California was chiefly inhabited by wild and savage tribes of Indians, and it was the policy of Spain, to which the said province then belonged, to foster and encourage new settlements of civilized people, both because such new settlements tended to augment the general welfare and to support and sustain the missions then recently estab-
171 lished in California for the conversion and civilization of the Indian tribes; that, in accordance with this policy, instructions were given by the viceroys to the governors of the said province touching the establishment of pueblos within the same. That the Pueblo of San José de Guadalupe was established by competent authority will fully appear by reference to the communication addressed by Señor Barcly y Besula, the viceroy of the King of Spain, to Señor Don Philip Nere, the governor of California, under date of the 22d of July, 1778, a certified copy of which is hereunto filed as part of this petition, marked "Exhibit A," and a translation thereof marked "Exhibit B," and also by reference to a communication under date of the 19th of July, 1779, from E. Core de Froin, the commanding general of the province, to the governor of California, inclosing to the said governor a certified copy of a royal order of the 6th of March, 1779, approving in express terms of the establishment of said pueblo. Certified copies of the said communication and of the said royal order are herewith filed as part of this petition, marked, respectively, "Exhibit C" and "Exhibit D," and a translation of said documents, marked "Exhibit E."

The establishment of said pueblo is again distinctly recognized in the communication from the said commanding general, De Croix, to
172 Señor Revera y Moneada, commander of recruits, under date of December 27th, 1779, a certificate of which is hereby filed as part of this petition, marked "Exhibit F," and a translation thereof, marked "Exhibit G," and also a communication from the same officer, under date of the 7th of Feb., 1780, to Don Martin de Massuga, a certified copy of which is herewith filed as a part of this petition, marked "Exhibit H," and a translation thereof, marked "Exhibit J."

If further evidence of the establishment of said pueblo be needed, it may be found in a communication from the said De Croix to the governor of California, under date of 10th of February, 1780, a certified copy of which is herewith filed as part of this petition, marked "Exhibit K," and a translation thereof, marked "Exhibit L."

Your petitioners further show that the said pueblo was established and founded at the periods aforesaid, in accordance with the laws, usages, and customs of Spain at that time in force in the then province of California, and in conformity with the royal regulations and decrees for the establishment and government thereof. They further show, as hereinafter set forth, that the founding and establishment of the said pueblo

was expressly sanctioned by the royal authority of the King of Spain, and was in all respects in conformity with the laws and usages of Spain relating to the establishment of such infant settlements.

173 Your petitioners further show that one of the chief objects of the government in the establishment of Pueblo of California was to encourage agriculture and the breeding of cattle, and in the then condition of the Spanish government was best to be promoted by the founding of pueblos or villages, granting to the inhabitants thereof, for their common use, extensive tracts of land as pasturage for their cattle.

That in pursuance of this policy there was granted by the governor of California to the said pueblo, or the inhabitants thereof, for their common use at the time of the establishment thereof, an extensive tract of land around and contiguous to the said pueblo, to be used as pasture-grounds for their cattle, and to be reserved solely for that purpose. That breeding of cattle was then the chief and almost the only business in which the inhabitants of Upper California were engaged, and it was from their lands that their means of subsistance were principally derived. That, as the inhabitants resided chiefly in pueblos and villages. it was indispensable not only to their peace and comfort, but to their very existence, that extensive pasture-lands for their common use should be assigned to the inhabitants of these pueblos or villages.

174 That, in view of the necessity, the government of Spain made liberal grants of land to all pueblos in California for these purposes, and there was accordingly granted by the governor of California, as is hereinbefore stated, to the said Pueblo of San José de Guadalupe, a large tract of land as a pasture-lot for the common use of the inhabitants. The particular boundaries and description of the said tract so granted will be made [to] fully appear by the official documents hereinafter particularly described and set forth.

Your petitioners further show that the original boundaries of the said commons or pasture lands, as defined at the time of the founding of the said pueblo, were as follows, to wit:

Beginning at a live-oak which formerly stood on the bank of the river Guadalupe, at its embarcadero; thence in a northeasterly direction two leagues eight hundred and seventy-two varas to a live-oak, the said line passing four hundred and ten varas south of the house of the citizen José Higuera; thence in a southeasterly direction passing across or through the place known as the "Los Buellas," "Pala," "San Felipe, laz Animas," to the "Arroyo de los Llagas;" thence in a westerly direction with the "Arroyo de las Llagas" two leagues eight hundred and seventy-three varas; thence in a northwesterly direction to a live oak on the coast range of mountains about midway between the Arroyo de las Lagues in a northeasterly direction to the place of begin-

175 ning; the length of the eastern line of the said survey being about eleven and a half leagues, and the length of the northern and southern lines being each about two leagues eight hundred and seventy-three varas.

Your petitioners further show that these were the ancient boundaries and defined as such at the time of the founding of said pueblo, and notoriously recognized as such ever since, except as to the western boundary-line which divides the lands of the said pueblo from those which appertain to the Mission of Santa Clara, concerning which last-mentioned line there have been some disputes between the inhabitants of said pueblo and the rev. padres of the said mission as far back as the year 1800. These disputes have grown to be of so serious a character as to demand the interposition of the viceroy of New Spain, and accord-

ingly in that year Don Señor Magresna, the viceroy, in communication with the provisional governor of California, informed him that he (the viceroy) had decided that for the future the river Guadalupe should serve as the boundary or dividing line between the pueblo and the mission, leaving to said pueblo part of the mountain that thus lies along the coast, and which is on the other side of the dividing river, and in order that they may have a provision of timber and wood, and directing the said provisional governor, for the purpose of preventing these
176 disputes in future, to designate by suitable landmarks and fixed monuments that part of the said mountain or coast which should be assigned to said pueblo.

In pursuance of this authority, Don Josefo Arguello, the said provisional governor of California, in conjunction with Friar Martin de Sandarta, appointed for that purpose by the rev. padre president of the said mission, proceeded to set apart for the use of the said pueblo a portion of the said mountain, all of which, together with the part thus designated, will appear by reference to a report of the said Arguello, under date of the 24th of July, 1801, which is herewith filed as part of this petition, marked "Exhibit M," and a transcript thereof, marked "Exhibit N." These proceedings, however, did not put an end to said disputes; on the contrary, the said dividing line continued to be a subject of controversy between the said pueblo and mission up to the year 1809, as will appear from the official documents herewith filed as part of the petition, marked "Exhibit O," a translation thereof marked "Exhibit P," and other like documents herewith filed as parts hereof, marked "Exhibit Q," and a translation thereof marked "Exhibit R." Long subsequent to the period, however, and after Mexico, or New Spain, including California, had revolted from the Crown of Spain and established itself as an independent republic, to wit, in the year 1837, doubts, it ap-
177 pears, still existed as to the precise boundaries of the said pueblo lands, and several persons in the year last aforesaid having applied to the ayuntamiento or town council of the said pueblo for permission to occupy in severalty certain portions of what the inhabitants deemed to be common or pasture lands of the said pueblo, Manuel Pinto and other inhabitants of the said pueblo, on the 21st day of December, 1837, presented to the said ayuntamiento their remonstrance against the said proceedings, claiming that said lands belonged to the inhabitants in common, and not to be occupied in severalty, and praying that proper steps be taken to ascertain definitely the boundaries of the said lands, and that the same be designated by fixed monuments, so that there might be no dispute.

In pursuance of his duty in that behalf, Juan Alvarez, the alcalde of the said pueblo and the presiding officer of the said ayuntamiento, on the 23d day of December, 1837, transmitted the said petition to Juan B. Alvarado, the provisional governor of the department of Upper California, with a request that he would cause the boundaries of the common lands of the said pueblo to be distinctly ascertained and marked. On the following day, to wit, on the 24th of December, 1837, the said provisional governor, by his official decree of that date, addressed
178 to the said alcalde, required the said ayuntamiento to appoint a commission of its own members, or of other persons, for the purpose of making a plan or map of the lands laid out as the legal endowment of the pueblo, first obtaining the proper information in regard to the neighboring estate, and with the most accurate description of the distances and name of owner, and the springs, groves, etc., contained therein.

In accordance with the said decree the said ayuntamiento, on the 20th March, 1838, appointed a commission for the purpose aforesaid, consisting of Guellamo Castro, Guellamo Gedmue, and Salvio Pacheco, who, being duly sworn, organized themselves into a commission in the most formal manner on the 22d day of March, 1838, and proceeded in the discharge of their duties. On the twenty-fifth day of the same month they went in person upon the said ground with a view to ascertain the said boundaries, and having made an actual survey thereof they designated and fixed the said boundaries according to the ancient monuments and landmarks then found existing on the said land, and which were recognized and pointed out [by] the ancient inhabitants as the true and just boundaries of the said pueblo lands, commencing at a live oak two leagues eight hundred and twenty-three varas in a northeasterly direction, passing through the sierra or range of mount-
179 ains which are called "Los Buellas," "Pala," "San Felipe," "Las Animas," and "Agreags de las Llagas." The length of the said line was about eleven and a half leagues; and at such end of the said line and in the middle of the place called the Pala, they caused to be erected the corresponding "landmarks of stone in a substantial manner *teluming* to the beginning point." They proceeded to run the northern line of said tract in accordance with what was acknowledged to be the lands belonging to the aforesaid pueblo, from the said beginning point. The said northern line was run by said commissioners in a southwesterly direction two leagues eight hundred and seventy-three varas to the last live oak that was then to be seen on the bank of the river Guadalupe at its embarcadero, said line passing four hundred and ten varas south of the house of José Higuera. The said commissioners also ascertained and decided the southern boundary of the said tract to be the Arroyo de los Llagas, the length of the said southern line being equal to the length of the northern line, to wit, two leagues eight hundred and seventy-three varas, commencing at the southern end of the eastern line of the said tract, and running thence in a westerly direction with the said Arroyo de Llagas the distance aforesaid, to wit, two leagues eight hundred and seventy-three varas. In ascertaining the western bound-
180 ary of the said tract, the proceedings of the said commissioners are involved in some confusion, but your petitioners insist that the said line as established by the said commissioners, and which your petitioners claim was in fact the true line, was as follows, to wit: Beginning at the live oak aforesaid, on the bank of the river Guadalupe, at its embarcadero; thence in a southwesterly direction to a live oak on the Coast Range of mountains, about midway between the Mission of Santa Clara and the Arroyo de las Llagas, and thence in a southeasterly direction to the western terminus of the south line of said tract, as hereinbefore described. Having concluded the said survey, and ascertained the said boundaries as aforesaid, the said commissioners caused a map or diagram of the same to be made exhibiting the said boundaries truly and accurately, as is contained by them, which map, together with their report in writing, they transmitted in the said month of March, in the year 1838, [to the] ayuntamiento of the said pueblo, and in their said report it is stated that they had ascertained the dividing line between the said pueblo and the said Mission of Santa Clara to be much further towards the west than it had then recently been reported to be; and they direct proper measurements to be established to designate the true line, all of which will more fully appear by
181 reference to a certified copy of the said proceedings herewith filed

as a part of this petition, marked "Exhibit S," and a translation thereof marked "Exhibit T." Your petitioners further show that at the date of said survey there were many old inhabitants of the said pueblo who were perfectly familiar with the ancient boundaries of the said lands, and that the said commissioners were themselves inhabitants of the said pueblo, who from their infancy had known the said land, and well acquainted with the local and visible monuments of which said boundaries were designated. They insist, therefore, that the said survey thus made under the authority of the governor of California, and with the consent of the ayuntamiento of the said pueblo, is conclusive of the extent and boundary of the said pasture-lands or commons of the said pueblo.

Your petitioners further show that on and for many years prior to the 7th day of July, 1846, the pueblo or village of San José de Guadalupe existed on the said tract, and so continued to exist up to and after the date of the treaty of Guadalupe Hidalgo.

That from the foundation of the said pueblo in the year 1777 up to the present time the tract of land hereinbefore described has been notoriously known and recognized as the commons or pasture-grounds of the said pueblo; and on the 27th of March, in the year 1850, by an
182 act of that date entitled "An act to incorporate the city of San José," the legislature of the Californias incorporated your petitioners by the name and style of the mayor and common council of the city of San José, and by the twenty-third section of the same act it is provided in substance that your petitioners shall succeed to all the legal rights and claims of the Pueblo of San José, and shall be subject to all the liabilities incurred and obligations created by the ayuntamiento of said pueblo, provided that said corporation shall not exercise municipal authority over any of said pueblo lands not embraced in the boundaries of the said city, except to rent, lease, or sell the same, all of which will appear by reference to act, which is here referred to as a part of this petition. By virtue of which act your petitioners claim they had succeeded to all the rights, title, and interest of the said pueblo ayuntamiento in and to the said lands, and that the same of right belongs to your petitioners.

Wherefore they pray that they may be confirmed in their title thereto by your honorable board, so that a patent may issue to them in pursuance of law.

Your petitioners further state that they have understood that several persons pretend to claim some portion of said land by virtue of pretended grants from certain persons claimed to have been govern-
183 ors of California, but your petitioners are ignorant of the names of these claimants, nor do they know what particular portions of said tract the several claimants pretend are covered by these alleged grants.

But your petitioners own that if there be any such pretended grants, they are either imitated and fraudulent, or, if genuine, are wholly null and void, the said governors having no authority in law to grant away the lands of said pueblo. If it shall hereafter appear that any such claims shall be preferred before your honorable board, your petitioners pray that they may be allowed to intervene in the said claims, and thus prevent the titles to said lands from being closed by fictitious and groundless claims.

They pray for all such general and equitable relief in the premises as the ends of justice may require and as their cause may demand.

JOHN WILSON,
Attorney for Petitioners.

Filed in office July 14th, 1852.

GEO. FISHER, *Sec'y.*

The next offer is a decree of the United States land commission dated February 5th, 1856, confirming the claim of four square leagues of land to the city of San José, the same being as follows:

184 *Decree of U. S. land commission, 14th June, 1852, confirming claim of four square leagues to city of San José.*

THE MAYOR AND COMMON COUNCIL OF THE City of San José
v.
THE UNITED STATES.

In this case it is adjudged by the commission that the claim of the petitioners for so much of the land described in their petition as is hereinafter particularly described is valid, and it is therefore hereby decreed that the same be confirmed.

And as to the claim of the said petitioners to the portion of land described in their petition and not embraced in the limits hereinafter specified, it is adjudged that their claim for the same is not valid, and their application for a confirmation thereof is rejected.

The land of which confirmation is hereby made is situated in the county of Santa Clara, containing four square leagues of land, and is bounded on the north and south by two parallel lines, each two leagues in length, and running due east and west, and on the east and west sides by two parallel lines, each two leagues in length, and running due east and west, and on the east and west sides by two parallel lines, each two leagues in length, and running due north and south; said
185 boundary-lines being so drawn that their respective centers shall be in a direction due north, south, east, and west from the center of the plaza of the city of San José, and each at the distance of one league from the same, excepting such portion of said area is situated on the side of the river Guadalupe opposite to said city, and making said river the boundary-line on that side of said area instead of the line above described.

ALPHEUS FELCH.
R. AUG. THOMPSON.
S. B. FARWELL.

Filed in office Feb'y 5th, 1856.

GEORGE FISHER, *Sec.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case and of the papers and evidence upon which the same are founded be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California and the other be transmitted to the Attorney-General of the United States.

Also, notice of appeal on behalf of the city of San José, filed in

as a part of this petition, marked "Exhibit S," and a translation thereof marked "Exhibit T." Your petitioners further show that at the date of said survey there were many old inhabitants of the said pueblo who were perfectly familiar with the ancient boundaries of the said lands, and that the said commissioners were themselves inhabitants of the said pueblo, who from their infancy had known the said land, and well acquainted with the local and visible monuments of which said boundaries were designated. They insist, therefore, that the said survey thus made under the authority of the governor of California, and with the consent of the ayuntamiento of the said pueblo, is conclusive of the extent and boundary of the said pasture-lands or commons of the said pueblo.

Your petitioners further show that on and for many years prior to the 7th day of July, 1846, the pueblo or village of San José de Guadalupe existed on the said tract, and so continued to exist up to and after the date of the treaty of Guadalupe Hidalgo.

That from the foundation of the said pueblo in the year 1777 up to the present time the tract of land hereinbefore described has been notoriously known and recognized as the commons or pasture-grounds of the said pueblo; and on the 27th of March, in the year 1850, by an
182 act of that date entitled "An act to incorporate the city of San José," the legislature of the Californias incorporated your petitioners by the name and style of the mayor and common council of the city of San José, and by the twenty-third section of the same act it is provided in substance that your petitioners shall succeed to all the legal rights and claims of the Pueblo of San José, and shall be subject to all the liabilities incurred and obligations created by the ayuntamiento of said pueblo, provided that said corporation shall not exercise municipal authority over any of said pueblo lands not embraced in the boundaries of the said city, except to rent, lease, or sell the same, all of which will appear by reference to act, which is here referred to as a part of this petition. By virtue of which act your petitioners claim they had succeeded to all the rights, title, and interest of the said pueblo ayuntamiento in and to the said lands, and that the same of right belongs to your petitioners.

Wherefore they pray that they may be confirmed in their title thereto by your honorable board, so that a patent may issue to them in pursuance of law.

Your petitioners further state that they have understood that several persons pretend to claim some portion of said land by virtue of pretended grants from certain persons claimed to have been govern-
183 ors of California, but your petitioners are ignorant of the names of these claimants, nor do they know what particular portions of said tract the several claimants pretend are covered by these alleged grants.

But your petitioners own that if there be any such pretended grants, they are either imitated and fraudulent, or, if genuine, are wholly null and void, the said governors having no authority in law to grant away the lands of said pueblo. If it shall hereafter appear that any such claims shall be preferred before your honorable board, your petitioners pray that they may be allowed to intervene in the said claims, and thus prevent the titles to said lands from being closed by fictitious and groundless claims.

They pray for all such general and equitable relief in the premises as the ends of justice may require and as their cause may demand.

JOHN WILSON,
Attorney for Petitioners.

Filed in office July 14th, 1852.

GEO. FISHER, *Sec'y.*

The next offer is a decree of the United States land commission dated February 5th, 1856, confirming the claim of four square leagues of land to the city of San José, the same being as follows:

184 *Decree of U. S. land commission, 14th June, 1852, confirming claim of four square leagues to city of San José.*

THE MAYOR AND COMMON COUNCIL OF THE City of San José
v.
THE UNITED STATES.

In this case it is adjudged by the commission that the claim of the petitioners for so much of the land described in their petition as is hereinafter particularly described is valid, and it is therefore hereby decreed that the same be confirmed.

And as to the claim of the said petitioners to the portion of land described in their petition and not embraced in the limits hereinafter specified, it is adjudged that their claim for the same is not valid, and their application for a confirmation thereof is rejected.

The land of which confirmation is hereby made is situated in the county of Santa Clara, containing four square leagues of land, and is bounded on the north and south by two parallel lines, each two leagues in length, and running due east and west, and on the east and west sides by two parallel lines, each two leagues in length, and running due east and west, and on the east and west sides by two parallel lines, each two leagues in length, and running due north and south; said
185 boundary-lines being so drawn that their respective centers shall be in a direction due north, south, east, and west from the center of the plaza of the city of San José, and each at the distance of one league from the same, excepting such portion of said area is situated on the side of the river Guadalupe opposite to said city, and making said river the boundary-line on that side of said area instead of the line above described.

ALPHEUS FELCH.
R. AUG. THOMPSON.
S. B. FARWELL.

Filed in office Feb'y 5th, 1856.

GEORGE FISHER, *Sec.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case and of the papers and evidence upon which the same are founded be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California and the other be transmitted to the Attorney-General of the United States.

Also, notice of appeal on behalf of the city of San José, filed in

186 the district court of the United States of the northern district of California, dated 4th April, 1856.

Also, a petition of the mayor and common council of the city of San José, filed April 4th, 1856, in the district court, praying for a review and reversal of the board of land commissioners.

Also, a decree of the United States district court, filed on the 6th of August, 1857, confirming the claim of the mayor and common council of the city of San José.

Also, an order of the court made on the 16th day of February, 1860, granting an appeal to the United States Supreme Court.

The next, the decree in the case made by the United States Supreme Court, confirming the claim of the mayor and common council of the city of San José to the lands—being the same lands described in a former decree.

The decree by writ of mandate was remitted to the United States district court, to which the appeal was taken, and a final decree of confirmation therein entered in pursuance of the directions of the mandate.

It was admitted that the exterior or outer boundaries of the general tract of land described in said decrees of confirmation includes lot number six of the five-hundred-acre lots of the pueblo of San José. Said several documents were read in evidence, and are as follows:

187 *Notice of appeal on behalf of city of San José, filed in the U. S. district court April 4th, 1856.*

In the district court of the United States, northern district, State of California.

MAYOR AND COMMON COUNCIL OF THE CITY OF San José *v.* THE UNITED STATES. } Notice of appeal.

You will please take notice that it is the intention of the above-named claimants to prosecute an appeal in the above-entitled cause to this court from the decision of the board of United States land commissioners rejecting their claim.

JOHN WILSON,
Attorney for Appellants.

To SAM'L W. INGE, Esq.,
U. S. District Attorney, and
JOHN A. MUNROE,, *Esq., Clerk of said Court.*

Filed April 4th, 1856.

CHEEVERS, *Deputy.*

Petition of mayor and common council for review and reversal.

In the district court of the United States, northern district of California, United States of America.

MAYOR AND COMMON COUNCIL OF THE CITY of San José *v.* THE UNITED STATES. } No. 286, in com'r. Petion. No 419 of transcript.

To the honorable Ogden Hoffman, j'r, judge of the district court of the United States for the northern district of California:

Your petitioners above named respectfully show that hereto-
188 fore, to wit, on the 14th day of July, 185[illegible], they filed before the

board of United States land commissioners for the State of California a petition for the confirmation of their claim to a tract of land situate in the northern district of California, and in the county of Santa Clara, for a description of which land and the title thereto reference is hereby made to said petition.

That after hearing said petition, with the proofs and the arguments of counsel in the cause, the said board, on the 5th day of February, 1856, rejected said claim as invalid.

That on the 26th day of February, 1856, a transcript of the record was filed in this court, by virtue whereof and by force of the statute in that case made and provided an appeal to this court was duly effected.

That on the 4th day of April, 1856, your petitioners filed in this court a notice of their intention to prosecute said appeal.

Your petitioners, therefore, pray that the decision of said board be reversed, and that this court confirm their title to said land, to which confirmation your petitioners allege they are justly and lawfully entitled.

JOHN WILSON,
Attorney for Claimants.

Filed April 4th, 1856.

CHEVERS, *Deputy.*

Decree of the U. S. district court, filed August 6th, 1857, confirming claim of city of San José.

189 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on the sixth day of August, in the year of our Lord one thousand eight hundred and fifty-seven; present, the honorable Ogden Hoffman, j'r, district judge.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF San José
v.
THE UNITED SATETS. } Decree.

Appeal from the final decree of the commissioners to ascertain and settle private land claims in the State of California.

The claimants claim the land included within the boundaries of the former Pueblo of San José de Guadalupeaccording to its ancient boundaries; and the cause having been heard upon appeal from the decision of the commissioners aforesaid, upon the transcript of the proceedings before the said commissioners, their decision and the papers and evidence on which said decision was founded, and the same having been argued by the district attorney on behalf of the United States, and by F. M. Haight and Joseph B. Crockett on behalf of the claimants representing the said pueblo, and due deliberation being thereupon had:

The said court, in pursuance of the laws of Congress in that case
190 made and provided, doth order, judge, and determine that the claim of the claimants to the land included within the ancient limits of the Pueblo of San José be confirmed to said claimants or their egal representatives according to the ancient boundaries of said pueblo, as ascertained by the orders aud decrees of the former governments of California, the maps and surveys in evidence, and the testimony of witnesses in the case, as set forth in the said transcript of the proceedings of the said commissioners sent to this court.

It is further ordered, adjudged, and decreed by the said district court that the boundaries of the said claim, being the same with those of the former Pueblo of San José, shall be ascertained and surveyed as follows: beginning at a point in the woods at a live-oak tree in the dividing line between said pueblo and what were formerly known as the lands of the Mission of San José, and if said tree is gone, where the same was in March, 1838; running thence a southeast course, which passes through the mountains which are called Las Buelles, Pala, San Felipe, Las Animas, and Aguas de las Llagas, to a monument of stone erected in March, 1838, and having reference to all the landmarks on this line, and to the monument of stone in the middle of the Pala; this line is in length eleven and one-half leagues, and its southern
191 termination the southeast corner of the ancient limits of the said pueblo, and of the land hereby confirmed to the claimants; thence, commencing again at the point first mentioned, being the said live-oak tree, or its former situation, and running a line from the northeast to southwest by west to the embarcadero of the Guadalupe, to the last live-oak which is seen on the bank of the River Guadalupe, or where the same was in March, 1838, being two leagues and eighteen hundred varas for the length of this line, and the same passing near the house formerly occupied by José Higuera, and distant from it four hundred and ten varas, the house being on the northerly side of this line; thence up the River Guadalupe to its source, and thence running with a line corresponding with the course of said river, as near as may be, and which is nearly from southeast to northwest, and having reference to monuments of stone formerly placed on this line, the last of which and the termination of this line was placed on the apex of a little hill which is at the foot of the mountain called "Parage de las Capitancillos," including part of the oak grove now or formerly at this place, and including all the willow grove now or formerly at the source of the said river; thence from said point at the foot of said mountain de las Capitancillos to the creek called Las Llagas, at or near its source,
192 and at such point as will make the distance from where said line strikes said creek to the southeastern point before ascertained the same length as the distance from the starting point in the survey to the embarcadero, that is, two leagues eight hundred varas; thence from said point last ascertained to the southeastern corner of the said tract before ascertained.

In making the survey and ascertaining the preceding lines, reference will be had to the survey and map of the boundaries of said pueblo made by the commissioners, Castro, Gulnac, and Silvio Pacheco, in March, 1838, and to the survey of Josef Arguello, under date of the twenty-fourth day of July, 1801, signed also by the friar, Martin de Selledeta, and José Miguel Aguna, and to the documents and depositions in the cause as to the ancient boundaries of said Pueblo of San José.

OGDEN HOFFMAN,
District Judge.

Filed Aug. 6th, 1857.

W. H. CHEVERS, *Deputy.*

Order of court granting appeal to U. S. Supreme Court, made 16th February, 1860.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 16th day of February, in the year

of our Lord one thousand eight hundred and sixty, for the trial
193 of land cases; present, the honorable M. Hall McAllister, circuit judge.

THE UNITED STATES
v.
MAYOR AND COMMON COUNCIL OF THE CITY OF San José. } No. 19.

In this case, on application of Tully R. Wise, esq., acting United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered in said cause at the June term, 1859, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

M. HALL McALLISTER,
Circuit Judge.

Mandate of U. S. Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of California, greeting:

Whereas lately, in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and the Mayor and Common Council of the
194 City of San José, appellees, the decree of the said district court, entered on the 26th day of November, 1859, is in the following words, viz: "An order having heretofore been entered in this cause, on the 2d day of December, 1857, setting aside the decree of confirmation rendered in the said cause on the 6th day of August, 1857, in which order it was specified that the claimants might move to set the same aside, and in pursuance of said leave the claimants having, on the 24th day of May, 1858, moved the court to vacate and set aside said order of the 2d December, 1857; and the said motion having been duly argued by counsel and submitted to the court, and the court being now fully advised in the premises, it is ordered, adjudged, and decreed that the aforesaid order, entered on the 2d day of December, 1857, setting aside the decree of confirmation, and ordering a rehearing of the said cause, be, and the same is hereby, vacated and set aside; and it is further ordered, adjudged, and decreed that the said decree of confirmation entered on the 6th day of August, 1857, stand as valid, and the same is hereby ratified in all things, and shall have the like effect as if the same had not been vacated as hereinbefore recited"—as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an ap-
195 peal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-five, the said cause came on to be heard before the said supreme court on the said transcript of the record and on the written stipulation of the counsel for the respective parties; it is now here, on motion of M'r Coffey, of counsel for the

appellees, ordered, adjudged, and decreed by this court that the decree of the said district court in this case be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed that the claim of the mayor and common council of the city of San José, the claimants to the land included within the ancient limits of the pueblo of San José, be confirmed to said claimants or their legal representatives according to the ancient boundaries of said pueblo, as ascertained by the orders and decrees of the former governments of California, the map and surveys in evidence, and the testimony of the witnesses in the case, as set forth in the transcript of the proceedings sent to this court.

It is further ordered, adjudged, and decreed by this court that the boundaries of the said claim, being the same with those of the
196 former pueblo of San José, shall be ascertained and surveyed as follows: Beginning at a point in the woods at a live-oak tree in the dividing-line between said pueblo and what were formerly known as the lands of the mission of San José, and, if the said tree is gone, where the same was in March, 1838; running thence a southeast course, which passes through the mountains which are called Las Buelles, Pala, San Felipe, Las Animas, and Aguas de las Llagas, to a monument of stone erected in March, 1838, and having reference to all the landmarks on this line, and to the monument of stone in the middle of Pala. This line is in length eleven and one-half leagues, and its southern termination the southeast corner of the ancient limits of the said pueblo, and of the land hereby confirmed to claimants; thence, commencing again at the point first mentioned, being the said live-oak tree, or its former situation, and running a line from the northeast by east to southwest by west to the embarcadero of the Guadalupe, to the last live-oak which is seen on the bank of the said river Guadalupe, or where the same was in March, 1838, being two leagues and eight hundred varas for the length of this line, and the same passing near the house formerly occupied by José Higuera, and distant from it four hundred and ten varas, the house being on the northerly side of this line; thence up the river Guadalupe to its source, and thence run-
197 ning with a line corresponding with the course of said river, as near as may be, and which is nearly from southeast to northwest, and having reference to monuments of stone formerly placed on this line, the last of which and the termination of this line was placed on the apex of a little hill which is at the foot of the mountain called "Parage de las Capitancillos," including part of the oak grove now of formerly at this place, and including all the willow grove now or formerly at the source of the said river; thence from said point at the foot or said mountain de las Capitancillos to the creek called Las Llagas, at or near its source, and at such point as will make the distance from where said line strikes said creek to the southeastern point before ascertained the same length as the distance from the starting-point in the survey to the embarcadero, that is, two leagues eight hundred varas; thence from said point last ascertained to the southeastern corner of the said tract before ascertained. In making the survey and ascertaining the preceding lines, reference will be had to the survey and map of the boundaries of said pueblo made by Commissioners Castro, Gulnac, and Salvio Pacheco, in March, 1838, and to the survey of Joseph Arguello, under date of the twenty-fourth day of July, 1801, signed also by the friar, Martin de Landeta, and José Miguel Osunia, and to the
198 documents and depositions in the cause as to the ancient boundaries of said pueblo of San José, subject to the following deduc-

tions, namely, the Ranchos Las Milpitas, Rincon de los Esteros, Pala, Yerba Buena, Cañada de Pala, San Felipe de las Animas, Laguna Seca, Santa Teresa, San Juan Bautista, Los Capitancillos, San Vicente, Las Uvas, Ojo Agua de la Coche, San Francisco de las Llagas, and also such other parcels of land as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals in proceedings now pending therein for that purpose; all of which said excepted parcels of land are included in whole or in part within the boundaries above mentioned, but are excluded from the confirmation of the mayor and common council of the city of San José. This confirmation is in trust for the benefit of the lot-holders under grants from the pueblo, town, or city of San José, or other competent authorities, and to any residue in trust for the use and benefit of the inhabitants of the city.

3D APRIL.

You, therefore, are hereby commanded that such further proceedings be had in said cause in conformity to the decree of this court as,
199 according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief-Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Costs of .....
Clerk .....
Attorney .....

$

Filed June 13th, 1866.

GEO. C. GORHAM, *Clerk*,
By DANIEL T. SULLIVAN,
Deputy.

Decree of the U. S. Supreme Court confirming claim, etc.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
THE MAYOR AND COMMON COUNCIL OF THE City of San José. } 419.

PUEBLO LANDS.

The mandate of the Supreme Court of the United States, duly authenticated under the seal of said court, and certified by the clerk
200 thereof, in the cause in which the United States were appellants, and the Mayor and Common Council of the City of San José were appellees, having been remitted to and filed in this court to be proceeded on according to law:

Now, therefore, on motion of Francis E. Spencer, esq., of counsel for

the Mayor and Common Council of the City of San José aforesaid, it is ordered, adjudged, and decreed, in conformity with the said mandate of the said Supreme Court, that the claim of the Mayor and Common Council of the City of San José, the claimants to the land included within the ancient limits of the pueblo of San José, be confirmed to said claimants or their legal representatives according to the ancient boundaries of said pueblo, as ascertained by the orders and decrees of the former governments of California, the map and surveys in evidence, and the testimony of the witnesses in the case as set forth in the transcript of the proceedings sent to the said Supreme Court.

It is further ordered, adjudged, and decreed by this court that the boundaries of the said claim, being the same with those of the former pueblo of San José, shall be ascertained and surveyed as follows:

Beginning at a point in the woods at a live-oak tree in the dividing-line between said pueblo and what were formerly known as the
201 lands of the mission of San José, and, if said tree is gone, where the same was in 1838; running thence a southeast course which passes through the mountains which are called Las Buellas, Pala, San Felipe, Las Animas, and Aguas de las Llagas, to a monument of stone erected in March, 1838, and having reference to all the landmarks on the line, and to the monument of stone in the middle of Pala; this line is in length eleven and one-half leagues, and its southern termination the southeast corner of the ancient limits of the said pueblo and of the land hereby confirmed to the claimants; then commencing again at the point first mentioned, being the said live-oak tree, or its former situation, and running a line from the northeast by east to southwest by west to the embarcadero of the Guadalupe to the last live-oak which is seen on the bank of the river Guadalupe, or where the same was in March, 1838, being two leagues and eight hundred varas, for the length of this line, the same passing near the house formerly occupied by José Higuera, and distant from it four hundred and ten varas, the houses being on the northerly side of this line; thence up the river Guadalupe to its source, and thence running with a line corresponding with the course of said river, as near as may be, and which is nearly from southeast to northwest, and having reference to monuments of stone formerly placed
202 on this line, the last of which and the termination of this line was placed on the apex of a little hill which is at the foot of the mountain called "Paraje de las Capitancillos," including part of the oak grove now or formerly at this place, and including all the willow grove now or formerly at the source of the said river; thence from said point at the foot of said mountain "de las Capitancillos" to the creek called Las Llagas, at or near its source, and at such point as will make the distance from where said line strikes said creek to the southeastern point before ascertained, the same length as the distance from the starting-point in the survey to the embarcadero, that is, two leagues eight hundred varas; thence from said point last ascertained to the southeastern corner of said tract before ascertained.

In making the survey and ascertaining the preceding lines, reference will be had to the survey and map of the pueblo, made by the commissioners, Castro, Gulnac, and Salvio Pacheco, in March, 1838, and to the survey of Joseph Arguello, under date of the twenty-fourth day of July, 1801, signed also by the friar, Martin de Landeta, and José Maguel Osuña, and to the documents and depositions in the cause as to the ancient boundaries of said pueblo of San José, subject to the following deductions, namely: the ranchos Las Milpitas, Rincon de los Esteros, Pala, Yerba Buena, Cañada de Pala, San Felipe de las Animas,

203 Laguna Seca, Santa Teresa, San Juan Bautista, Los Capitancillos, San Vicente, Las Uvas, Ojo Agua de la Coche, San Francisco de las Llagas, and also such other parcels of land as have been by grants from lawful authority vested in private proprietorships, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals in proceedings now pending therein for that purpose; all of which said excepted parcels of land are included in whole or in part within the boundaries above mentioned, but are excluded from the confirmation to the mayor and common council of the city of San José. This confirmation is in trust for the benefit of the lot-holders under grants from the pueblo, town, or city of San José, or other competent authority, and for any residue in trust for the use and benefit of the inhabitants of the city.

OGDEN HOFFMAN.
District Judge.

Filed June 13th, 1866.

GEO. C. GORHAM, *Clerk*,
Per S. NEALL, *Deputy.*

M'r MATHEWS. We ask that your honor strike out these documents as evidence, because they are irrelevant. The decree expressly excepts all lands passed upon by the Mexican government or their authorities.

204 The court sustained the objections and excluded said documents. Excepted to by defendants.

M'r PECKHAM. We now offer that map of the pueblo lands of the city of San José surveyed under the instruction of the surveyor-general of the United States—the map of the final survey of the land confirmed by the decree last aforesaid—the same being as follows:

(Plat of the pueblo lands of San José finally confirmed to the mayor and common council of San José.)

(Here follows map, marked page 204.)

Counsel for plaintiff objects to it as irrelevant, and as not an official survey; that the law required that within ninety days after the map was made it should be forwarded to the Commissioner of the General Land-Office for its action, and that there was no evidence of its having been so dealt with.

The court sustained the objection; to which ruling defendants excepted.

M'r PECKHAM. You have no objection to this because it is a copy? (referring to said map.)

M'r MATHEWS. No, sir.

(Counsel for defendants reads from the map.)

It was admitted by plaintiffs that whatever title the city of San José had in the five-hundred-acre lot number six under the proceedings had in the Federal courts given in evidence by defendants is in the defendants in this case.

205 M'r HOPKINS, for defendants, testified:

Question. Where do you reside?

Answer. In San Francisco.

Q. What is your business?

A. I have charge of the Spanish archives in the office of the United States surveyor-general.

Q. Have you in your possession the papers pertaining to the claim of Antonio Chaboya for the rancho Yerba Buena?

A. Yes, sir.

Q. Will you produce them?

(Witness produces the papers, and counsel proceeds:) This is a certified copy of an espediente. Here is a traced copy of the same paper already given in evidence by the plaintiffs. What was this called?

A. The Alvarado espediente for Yerba Buena.

Q. State whether you have with you the original of which that purports to be a copy.

A. I have.

(The witness here produced the original espediente, a copy of which has been given in evidence by the plaintiffs.)

Q. This original paper, where does it belong?

A. It was filed by claimant before the land commissioners—by the claimant for Yerba Buena—in support of his claim before that board.

Q. When was it filed?

206 A. On the 15th of March, 1853, as shown by the indorsement.

(The said original document was here offered in evidence by defendants, together with a translation hereof, the same being as follows:)

Alvarado espediente for rancho Yerba Buena.

(T)
[A]—F. C.

Espediente promovido por Dn. Antonio Chovoyo en pretencion del parage nombrado Yerbabuena en la demarcacion del Pueblo de Sn. José Guadalupe.

AÑO DE 1840.

Sello tercero. Dos reales.

Habilitado provisionalmente por la Aduana Maritima de Puerto de Monterrey en el departamento de los Californias, para el año de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

[SEAL.]

Mont. T. Eno. 1 de 1840 informe al Sor. Prefecto del 1er Distrito, lo que le paresca conveniente sobre el contenido de esta instancia,

ALVARADO.

207 EXMO. SORL. GOBERNADOR: Antonio Chavolla, natural de este departamente, y vecino del pueblo de Sn. José Guadaloupe ante V. E. respetuosomte. digo; que desde el año de 1833, ocupo el paraje, nombrado la Yerbabuena cituado en la jurisdiccion de aho. pueblo conforme con la consecion, que me hizo en 25 de Nbre. del mismo año el Sor. General Dn. José Figueroa, gefe supr. politico y comandte. gral. del territorio como consta por los documentos que a V. E. accompño y teniendo dho. conscesion el caracter de pedicional, con condiciones grobaser, que perjudican, actollemente mis intereses, a la vez de que ya he fabricado casa, hecho lobores y puesto mis bienes de campo he de merecer de V. E. se digne concederme en propiedad el mencionado paraje de Yerbabuena en estencion de sus clitios de ganado ma yor colindando por el sur por el Portezugelo

Exmo. de los Animos por el norte con el terreno de Dn. Josquin Higuera y con la Laguna Seca del mismo pueblo pr. el este con la cuchilla de la sierra immediata y por el Oeste con el rancho de los Bernales y punta de Bollar * * * * * * * * * * * * * * en las cercanias del Arroyo del Collote cuyo terreno no pertenece a los egidos del pueblo.

208 P. F. A. V. E. suplico se sirra tomar en consideracion mi pedido concediendome en propriedad el referido terreno de que recibere gracia y justicia.

Monterey, Enero de 1840.

ANTONIO CHOVOYO.

SOR. GOBERNADOR: La prefectura de mi cargo, ha examinado detemdomente la presente solicitud, y constandole que es cierte todo lo que espose en alla el Co. Antonio Chovoya sobre que algunos años ha poseido el parage nombrado la Yerbabuena los limites que señolo en su peticion asi que ni pertenece á particular ni pueblo porque al de Sn. José Guadolupe no tiene aun señalados egidos con arreglo á las leyes es de.

(Sella cuarto—una cuartilla.)

Habitilado provisionalmente por la aduana maritima de puerto de Monterrey en el departamento de las Californias para el año de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.

209 Paracer que V. E. se sierra concederle en propiedad al mismo Sor. Chavoya los seis sitios de ganado mayor que pretende sujetandose a los linderos que apresa en ni misma instancia.

Pueblo de San Juan de Castro, Febrero 17 de 1840.

JOSÉ CASTRO.

MONTEREY, *Fbro.* 24 *de* 1840.

Vista la presente solicitud las documentos que acompañan, con los informes practicados, y todo lo demas que se tuvo presente concede en propiedad al cuidadano Antonio Chavolla el parage nombrado Yerbabuena situado en la jurisdiccion del Pueblo de Sn. José Guadolupe en la estencion de seis sitios de ganado mayor poco mas o menos de que tiene yo tomado posecion conforme los limites que espresa en su solicitud.

JUAN B. ALVARADO.

Translation of Alvarado espediente for rancho Yerba Buena.

(Third seal—two reales.)

Provisionally authorized for the maritime custom-house for the port of Monterey for the years of 1840 and 1841.

ANTONIO MARIA OSIO.

JIMENO.

(Here follows map, marked page 209.)

To his excellency the governor:

I, Antonio Chaboya, a native of this department, and a resident of the Pueblo of San José Guadalupe, before your excellency respectfully represent, that since the year 1833 I have occupied the place named Yerba Buena, situated in the jurisdiction of said pueblo, in accordance with a concession made to me on the 25th of November of the same year by the Señor General Don José Figueroa, superior political chief and commandant-general of the territory, as appears by the documents herewith presented to your excellency, and said concession being of a personal character, with onerous conditions which notably affect my interests, having already built a house, cultivated the ground, and placed my stock thereon, I have to ask your honor to be pleased to grant me the said place of Yerba Buena in property, of the extent of six square leagues, bounded on the south by the Portosuelo of Los Animas; on the north by the land of Don Joaquin Higuera, and by the Laguna Seca of the said pueblo; on the east by the cuchilla of the neighboring sierra; and on the west by the rancho of the Berneles and the point of the Roblar, near the Arroyo del Coyote, which land pertains to the ejidos of the pueblo.

Wherefore I pray your excellency to be pleased to take this my
211 petition into consideration, and grant me the said land in property, in which I will receive grace and justice.

Monterey, January 4th, 1840.

ANTONIO CHABOYA.

MONTEREY. *January 5th*, 1840.

Let the prefect of the 1st district report what may be necessary on the foregoing petition.

ALVARADO.

To his excellency the governor:

The prefecture under my charge has carefully examined this petition, and finding that the statements therein made by the citizen Antonio Chaboya in relation to his having possessed the place named la Yerba Buena for some years, also in relation to the boundaries mentioned in his petition, together with the fact that it does not pertain to any individual or pueblo, since the Pueblo of San José Guadalupe has not yet had its ejidos marked out in accordance with the laws, the prefecture is of the opinion that your excellency may grant said place in property to the said Chaboya, that is, the six square leagues for which he petitions, subject to the boundaries set forth in said petition.

Pueblo of San Juan de Castro, Feb'y 17th, 1840.

JOSÉ CASTRO.

MONTEREY, *Feb'y 20th*, 1840.

212 In view of the present petition and the accompanying documents, together with the reports in relation thereto, and all other matters necessary to be considered, I grant in ownership to the citizen Antonio Chaboya the place named Yerba Buena, situated in the jurisdiction of the Pueblo of San José Guadalupe, of the extent of six square leagues, a little more or less, of which he has already taken the possession, in accordance with the boundaries set forth in his petition.

JUAN B. ALVARADO.

To which testimony the plaintiffs objected.

M'r PECKHAM. We propose to show that this document, a copy of

which the plaintiffs introduced in evidence here, is a private document; that it came from the hands of Antonio Chaboya, and not from the government archives.

M'r MATHEWS. Is that for the purpose of attacking its validity?

M'r PECKHAM. I don't know what we shall show before we get through.

M'r MATHEWS. If the gentleman wishes to show that they are invalid, we shall object to it on that ground.

M'r PECKHAM. We propose to show that in 1850 Antonio Chaboya had possession, by permission of the Mexican government, of a tract of land,
213 and that the line of that land was two or two and a half miles from the Coyote Creek, and that this set of papers were got up—forged, fabricated—purporting to be a grant from Alvarado of a place called the Yerba Buena Rancho, and bounded by the Coyote Creek, and that copies of those forged papers have been introduced in evidence by the plaintiffs in this case, and that by means of those forged papers before the United States land commission and courts they got a confirmation and patent for the Yerba Buena Rancho, bounding on Coyote Creek, throwing the boundaries two or two and a half miles to the west from the place where they were understood to be at the time the deed was given by Pedro Chaboya to Jones and Eldridge, which has been given in evidence in this case. Our point, your honor, is the same one you were asked to pass upon yesterday.

M'r MATHEWS. Our objection to the testimony as offered for the first purpose, as stated by Mr. Peckham, is that the title papers of Antonio Chaboya having been offered fixing the boundaries to his ranch, and they having been sustained by the Government of the United States, that that is conclusive as to the boundaries, and parol testimony cannot contradict that testimony so offered. So far as an attempt is made by Pedro Chaboya to show that his brother was a forger, we object to that as inadmissable, because the Government of the United States passed
214 upon that question, and that their decision is an adjudication binding upon all, and the validity of that espediente cannot be here called in question.

The court, after argument, sustained the objection; to which ruling objection was taken by defendants.

M'r PECKHAM. Q. M'r Hopkins, what are those papers? (referring to papers here produced and shown witness.)

A. The first?

Q. Yes, sir.

A. The first is a petition, followed by certified copies of orders of Governor Figueroa, and a map. It is an order of Governor Figueroa, being a permission to build a house on certain lands.

Q. Please read that to the jury in English, or state the substance of that to the jury in English.

(The witness reads and translates the paper.) That is followed by a certified copy of an order by the Governor Figueroa, (witness reads the order,) said documents and translations being as follows: (See folio .)

Q. In the order by Figueroa no quantity of land is specified?

A. No, sir.

Q. And no boundaries given?

A. No, sir.

Q. That map is made in 1833?

A. Yes, sir.

Q. What does it purport to be a map of?

215 A. A map of Yerba Buena and Socayre.

Q. Is the Coyote Creek shown on any portion of that map as a boundary?

A. The Coyote Creek?

Q. Yes.

A. It is not.

Q. Look at that petition to the prefect accompanying those papers, and tell the jury whether you observe any evidence of alteration or mutilation.

M'r MATHEWS. We object to that on the same ground as before.

M'r PECKHAM. We propose to show that that paper has been changed since it was written. They introduced a certified copy, and now we introduce the original paper, and propose to show that it has been changed.

The court, after argument, sustained the objection; exception taken by defendants.

M'r MATHEWS. He proposes to show that a document declared genuine by the United States courts is a forged document.

M'r PECKHAM. If the court please, I think the court understands the case. I say the document is admissible. They have introduced here a certified copy of the document coming from the United States surveyor's office; they have introduced it in evidence in this case for their
216 purpose; they introduced it in place of the original. Now, then, we produce that original document from which that traced copy is made, and we propose to show that it is not a genuine document, but that it is a forged one.

The COURT. I shall sustain the objections.

Exception taken by defendants.

M'r PECKHAM. The document is in evidence for the purpose of showing the boundaries. Those boundaries can only be shown by showing the quantity. Now, then, we propose to show by this witness that the quantity named in that document of the land pertaining to the rancho of Antonio Chaboya has been changed from one league to six leagues.

The court refused to allow the proof; and exception taken by defendants.

Q. Have you the petition of Antonio Chaboya to the land commission for the confirmation of his claim?

A. Yes, sir.

M'r PECKHAM. I offer this document in evidence, being the petition of Antonio Chaboya to the land commission for the confirmation of his claim.

M'r MATHEWS. For what purpose, M'r Peckham?

A. On the question of boundaries. It does not mention any boundaries. I offer this document in evidence to show that Antonio
217 Chaboya, on the 9th day of March, 1852, at the time of filing his claim before the land commission, had never himself dreamed of the Alvarado document; that he did not claim under such a document, but claimed under the Figueroa document.

To which the plaintiff objected that he had offered a patent from the Government of the United States to Antonio Chaboya, establishing the genuineness of the Alvarado document mentioned by the counsel, and that the testimony is incompetent to contradict that judgment stated in the patent.

Counsel for defendants reads the document, it being as follows:

Petition of Antonio Chaboya to Land Commission for confirmation of his claim.

Before the honorable the commission to ascertain and settle private land claims in the State of California.

Antonio Chaboya, a citizen of said State, gives notice that he claims a tract of land therein situated, in the county of Santa Clara, with the boundaries shown in the annexed map or plan, and known by the name of Yerba Buena or Socayre.

The claimant went into possession of said land in the year , by permission of the authorities of the municipality of San José de Guadalupe, to the commons of which town it was supposed to belong,
218 and on the 25th of November, 1833, his right to the same was recognized, and a decree to serve him for title thereto given in his behalf by Don José Figueroa, political chief or governor of California, and as such authorized to make said decree, and the claimant has ever since lived on, occupied, and possessed said land undisturbed.

The original of the papers before mentioned exist in the archives of the former governments of California. A copy of the certified copy of said decree, which was furnished to the claimant by direction of said Governor Figueroa, with a translation of the same, and a copy of a map or plan of said land, are herewith presented, marked "A."

The claimant relies on the documentary testimony above referred to, and to such other testimony as he may obtain. There is no conflicting grant to said land, or to any part thereof, in the knowledge of the claimant.

JONES, TOMPKINS & STRODE,
Attorneys for Claimant.

(Indorsed:) No. 93. Antonio Chaboya. Rancho de la Yerba Buena ó Socayre. Petition filed in office March 9th, 1852. Geo. Fisher, sec'y. Recorded journal vol. I, pages 329. George Fisher, sec'y.

OFFICE OF THE SURVEYOR-GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

219 I, Sherman Day, surveyor-general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed two pages exhibit a true, full, and correct copy of the petition of Antonio Chaboya to the board of land commissioners for a confirmation of the Rancho Yerba Buena, together with the indorsements thereon, as the same is on file in my office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 13th day of January, A. D. 1869.

[SEAL.]

SHERMAN DAY,
U. S. Surveyor-General for California.

[Five-cent internal-revenue stamp cancelled.]

Plaintiffs also object that it is not a declaration of Antonio Chaboyo, but simply a declaration of his counsel.

The COURT. I sustain the objection on that ground.

Exception taken by defendants.

220 (The court directed the jury that said document was not testimony.)

Counsel for defendants next offered to prove by the introduction of the original petition filed before the United States land commission on behalf of Pedro Chaboya, for a confirmation of his claim to the Rancho Socayre or Yerba Buena, and signed on his behalf by Jones, Tompkins & Strode, as his attorneys, that Antonio Chaboya did not at that time claim to have any grant from Alvarado; that he claimed only the land under the document which has been given in evidence in this case singed by José Figueroa.

(Plaintiffs object to that on the specific ground that it is not signed by Antonio Chaboya or sworn to by him.

The court sustained the objection; defendants excepted.)

M'r HOPKINS—continued.

By M'r Peckham:

Q. Will you state whether there is any Mexican archives in your custody or under your control, any copy or record of this Figueroa document made in 1833?

A. There is, sir; I believe, an espediente; I believe this is a copy of it—(referring to copy in evidence.)

Q. Will you explain the paper, and see if there is anything in it fixing the quantity or boundaries of the land?

221 M'r MATHEWS. The document, I suppose, your honor, speaks for itself.

M'r PECKHAM. He is examining the document to see if it is the one not fixing the quantity or boundaries.

The WITNESS. There is nothing in reference to quantity or boundaries.

Q. How is it described?

A. As a place near the Yerba Buena.

Q. A certified copy of another document has been given in evidence in this case, bearing date of 1840 or 1841, and purporting to be signed by Alvarado; have you the original from which that copy was made?

A. I have.

Q. Will you produce it?

A. The witness did so.

M'r PECKHAM. We now propose, if the court please, to prove by this witness and other witnesses facts and circumstances tending to show that that document was manufactured after the year 1852.

(Plaintiffs object, on the ground that it contradicts the patent; and proceeded as follows:

I desire, however, as I have offered these certified copies in evidence, and as the gentleman would make it appear that those copies are not true, to say that we do not object, but expressly consent that he

222 ask this witness whether those are true copies in all respects of this document, and of the Alvarado espediente of 1840.

To which counsel for defendants replied that they made no point that the documents were not true copies, but they wished to show that the original espediente of 1840 was a forged document, and that the other had been materially changed with a view of presenting the same to the land commission, and that the confirmation to Antonio Chaboya had been obtained by means of these forgeries.

The court refused to permit the evidence, and further remarked: I have nothing to do with the adjoining land claims, except so far as they affect the boundaries of the land in controvery.

To which ruling defendants at the time excepted.)

Q. When was that document filed?

A. Filed before the land commission on the 10th day of December, 1853.

Q. Tenth December, 1853?

A. Yes, sir.

Q. By whom?

A. The paper does not show.

M'r MATHEWS. What is the object of that? The documents speak for themselves.

M'r PECKHAM. Are there any Mexican archives—any records of those documents, or reference to them?

223 (Plaintiffs object on the same ground. It can be admissible only to show that that is a fraud. It is not admissible except for that purpose.

The court overruled the objection; and ruling excepted to.)

The WITNESS. A. There is not.

Q. Are you in the employment of the surveyor-general, and in charge of the archives?

A. I am.

Q. You have in your custody the archives of the land commission?

A. I have.

The testimony was here closed by all parties.

The cause having been argued by counsel for the parties, the court instructed the jury as follows:

Instructions of court to jury.

This is an action of ejectment for a tract of land described as a five-hundred-acre tract known as lot six, which has been confirmed by a decree of the United States Supreme Court, rendered on the 23d day of February, 1863, to Pedro Chabolla.

This decree of confirmation of the claim of title of Pedro Chabolla vested in him title to the lot; and as the confirmation related back to the date of his petition to the United States board of land commissioners, he was, by virtue of it, seized in fee of the lot in December, 1850.

224 At that time Chabolla conveyed by deed to Jones and Eldridge a tract of land described in the deed as the N. E. ¼ league of his land or ranch, bounded on the east by the lands or ranch of the Higuerras and of Antonio Chabolla, on the north by the lands of the Pueblo of San José, on the south and west by the lands of Pedro Chabolla.

The plaintiff has connected himself by mesne conveyances with this deed, and claims that the lot six in controversy confirmed to Pedro Chabolla is part of the land conveyed by the deed.

The first thing necessary to be done is to locate the ranch claimed by Pedro Chabolla at the date of the deed, according to the calls of the deed. The deed itself fixes no initial point from which the calls of the deed may be run. The lines, therefore, must determine by the calls of the deed itself, and the light which Chabolla's claim of title to his ranch sheds upon them; and the calls are to be determined by the deed itself, and the claims of title of the different ranchos called for by the deed.

The respective espedientes of the adjoining ranchos called for by the deed shows the land and the boundary lines of the land claimed by the respective ranch-owners described in the deed.

These at the date of the deed were claims of title to land under

225 the Mexican government, and were what is known as imperfect or inchoate grants—grants unconfirmed and unlocated by the government. The right to confirm the claim and locate it by precise boundaries remain in the Mexican government, and passed to the Government of the United States upon the acquisition of California by the United States. When the United States exercised this right of confirmation and location, the grantee of the claim and all persons under him became bound by the decision of the Government.

Now, the deed calls for the ranch of Antonio Chabolla and of Higuerra on the east. Whatever is false in this or any other of the calls may be discarded, if the land is otherwise described with certainty. The espediente of the claim of Antonio Chabolla describes the west line of his ranch as the rancho of the Bernals and the Punta del Roblar near the Coyote Creek. This line, as it has been located by the United States and described in the patent issued to Chabolla, commenced at Punta del Roblar and runs with the Coyote Creek; and it being the west line of Antonio Chabolla ranch, it answers the call of the deed for the east line of the claim of Pedro Chabolla.

The second call is the line of the pueblo lands on the north. In his petition Chabolla claimed the line to be fifteen hundred varas
226 from his house. The other calls are the ranch being south and west.

The location of these lines gives the ranch claimed by Pedro Chabolla and described in his deed. The deed conveys the northeast half league of it in a square form according to rectangular lines; and if you believe from the evidence that this half league includes the land in controversy, or any part of it, you will find for the plaintiffs. But if you believe that it does not include it, or any part of it, your verdict should be for defendants.

At the request of counsel for plaintiffs the court gave the following instruction:

First. That in locating upon the ground the land described in the deed from Pedro Chabolla to Jones and Eldridge, the jury must locate it, if possible, in such manner that each of the calls made in said deed will be brought into action. That if, however, there be any inconsistency between the designation of the northeast half league of the lands or rancho of Pedro Chabolla and any of the other calls, the said designation of the northeast half league of the lands or rancho of Pedro Chabolla must be regarded as corroborating the said calls so inconsistent therewith, and the call, if any, so inconsistent, must be discarded.

Second. What was and is the rancho and lands of Pedro Cha-
227 bolla must be determined by the petition of Pedro Chabolla to Governor Alvarado and the espediente thereto attached, which said petition and espediente are set out in section third of the stipulation in evidence, and the petition of said Pedro Chabolla to the United States district court, of date of June 15th, 1857, and now in section eleven of said stipulation.

Third. That the northern boundary-line of the said lands and rancho claimed by Pedro Chabolla is a line drawn fifteen hundred varas north of the old house of the said Pedro Chabolla.

Fourth. That said line last mentioned is the northern line of the lands named in the said deed from Pedro Chabolla to Jones and Eldridge.

Fifth. That in case it should appear to the jury from the evidence that in locating the lands mentioned in the deed from Pedro Chabolla to Jones and Eldridge, if any doubt or ambiguity as to the objects mentioned therein as boundaries arise, such of those objects must be taken

(other things being equal) which will make the conveyance most favorable to the grantees.

To the giving of each and every of the foregoing instructions the defendants at the time excepted.

Counsel for defendants then asked the court to instruct the jury as follows:

First. The confirmation by the district court of the five-hundred-acre lot number six to Pedro Chabolla is void for want of jurisdiction,
228 and such confirmation does not confer upon Chabolla, or any one claiming under him, any title to or interest in said lot.

Second. The tract of land conveyed by Pedro Chabolla to W. Claude Jones and Eldridge is equal to that contained in a quadrangular figure measuring one-half of a league on each side.

Third. The grant by Alcalde Dimmick to Pedro Chabolla vested no title in Chabolla, as the alcalde had no power to make such a grant; and the confirmation of that claim by the United States district court does not come within the exception in the decree of the United States Supreme Court to the mayor and common council of the city of San José.

Fourth. The decree of confirmation in evidence in this case relates to the date of the filing of the petitions in the land commission upon which said confirmations were based; and as the claim of the city was presented before that of Pedro Chabolla, the city is deemed in law to have the prior confirmation.

Fifth. The title of the defendants claiming under the city of San José to five-hundred-acre lot number six is superior to the title of plaintiffs under the confirmation to Pedro Chabolla.

Sixth. The deed from Pedro Chabolla to Jones and Eldridge calls for the lots or lands of the pueblo of San José, the rancho of Joaquin
229 Higuerra, and the rancho of Antonio Chabolla; and the land must be located, if possible, so as to satisfy each of these calls. It must be located so as to adjoin the rancho of Joaquin Higuerra, the rancho of Antonio Chabolla, and the lots or lands of the pueblo.

Seventh. If the land conveyed to Jones and Eldridge can be so located as to adjoin the lands of Higuerra and Antonio Chabolla, it must be so located, although the lands of Higuerra may be on the east and Chabolla on the south, instead of the lands of Higuerra and Chabolla on the east.

Which said instructions so as aforesaid asked to be given by said defendants, except the sixth, were by the court refused.

To which ruling of the court in refusing to give such instructions so asked to be given by said defendants as aforesaid said defendants then and there excepted.

The jury then retired for consultation, and on the following day the jury were brought before the court, and through A. L. Boggs stated to the court that they did not know whether they understood the instructions of the court with reference to the western boundary line of the rancho of Antonio Chaboya.

Whereupon the court instructed the jury that the line of said Antonio Chaboya's land as claimed by him was the Punta del Roblar,
230 near the Coyote Creek, and that his western line was the Coyote Creek, and was necessarily the eastern line of the land or rancho of Pedro Chaboya, and his boundary on the east was the line of the Coyote Creek extended to intersect the line of the lots of the pueblo of San José.

To the giving of which instruction the defendants, by their counsel, at the time excepted.

The jury again retired and subsequently came into court, and on the 16th day of September, 1869, rendered their verdict, which is in the words and figures following, to wit:

Verdict of jury.

"We, the jury, find for the plaintiff.

"A. L. BOGGS, *Foreman.*

"San José, Sept. 16th, 1869."

The said verdict having been entered, judgment was ordered to be entered in favor of the plaintiffs, and against the defendants, which was done accordingly.

That the said defendants, within five days after said verdict was rendered as aforesaid, filed and served upon the attorneys of said plaintiffs a notice of their intention to move for a new trial of said cause upon the grounds following, to wit:

Notice of intention to move for new trial.

First. Insufficiency of the evidence to justify the verdict;

231 Second. Because the verdict is against law; and

Third. Because of errors of law which occurred at the trial; which were then and there excepted to by the defendants.

That upon the filing of said notice, to wit, on the 20th day of September, A. D. 1869, the said court made an order that the defendants should have thirty days from and after said 20th day of September, 1869, to prepare and file their statement on motion for a new trial of said cause, and that all proceedings in said cause be stayed until defendants' motion for a new trial should be heard and determined.

That afterwards, to wit, on the 9th day of October, 1869, counsel for the said plaintiffs, by written stipulation filed in said cause, agreed that defendants should have ten days from and after said 9th day of October, 1869, within which to file their statement on motion for a new trial of said cause.

The said defendants make and file the foregoing statement in support of their motion for a new trial, and ask that the same be allowed and certified as a true and correct statement, and that upon the errors hereinafter assigned and the specifications of the insufficiency of the evidence a new trial be granted them.

PECKHAM & PAYNE and
S. O. HOUGHTON,
Att'ys for Defendants.

232 And defendants now move the court to set aside and vacate said verdict and the judgment herein and for a new trial upon the following grounds:

Grounds for vacating judgment and granting new trial.

First. Errors in law which occurred at the trial and which were there and then excepted to by the defendants.

And the defendants now specify the following as the errors committed at the time and upon which they rely in support of said motion:

Specification of errors.

First. The court erred in overruling defendants' objections to the admissibility of the decree of the district court of the United States for the northern district of California, in the case of the United States v. Pedro Chaboya, and the decrees of the Supreme Court of the United States, set out in Exhibits A, B, and C, attached to the stipulation of the parties, and allowing the same to be read in evidence.

Second. The court erred in refusing to allow defendants' counsel to ask of the witness Healey to state, if he knew, "what was understood by people generally in San José and vicinity, prior to 1857 or 1858, as Antonio Chaboya's west boundary?"

233 Third. The court erred in overruling defendants' objections to the admissibility of the deposition of Antonio Suñol, and in allowing the same to be read in evidence.

Fourth. The court erred in refusing to allow defendants to prove that in 1850 Antonio Chaboya had possession by permission of the Mexican government of a tract of land; that the line of that land was two or two and a half miles from the Coyote Creek; and that Alvarado espediente purporting to be a grant for the place called Yerba Buena, and bounding it on the Coyote Creek, was forged and fabricated; and that the confirmation and patent to Antonio Chaboya for the Rancho Yerba Buena, bounding it on the Coyote Creek, and changing the boundary from two to two and a half miles west from where they were understood to be at the time the deed was given to Jones and Eldridge, were procured by such fraudulent and forged papers.

Fifth. The court erred in refusing to allow defendants to prove that the petition from Antonio Chaboya to Governor Figueroa had been altered and mutilated.

Sixth. The court erred in refusing to allow defendants to read in evidence to the jury the petition of Antonio Chaboya to the United States board of land commissioners for a confirmation of his claim to the Rancho Yerba Buena.

234 Seventh. The court erred in refusing to allow defendants to prove by the witness Joachin Higuera what was the western boundary of the Pala Rancho.

Eighth. The court erred in refusing to allow defendants to prove by the witness Joaquin Higuera what he knew of the boundaries of Antonio Chaboya's rancho prior to the organization of the United States land commission.

Ninth. The court erred in refusing to allow defendants to prove by the witness Higuera that in 1847 John Burton, alcalde, with a surveyor, went to make a survey of the line between Rancho Yerba Buena, then claimed and in possession of Antonio Chaboya, and the pueblo lands of San José, and that they called on Antonio Chaboya to point out what he claimed as the boundaries of his rancho dividing his lands from the pueblo lands of San José, and that he went and pointed out the boundaries, and that they surveyed the line as directed by him, and that such line was two miles east of the Coyote Creek.

Tenth. The court erred in refusing to allow defendants to prove that Antonio Chaboya never did claim, prior to the organization of the land commission, that his Rancho Yerba Buena extended within two miles of the Coyote Creek.

Eleventh. The court erred in striking out and excluding from the jury the final decree of confirmation and accompanying papers con

235 firming the claim of the mayor and common council of the city of San José.

Twelfth. The court erred in instructing the jury that the decree of confirmation of five-hundred-acre lot number six to Pedro Chaboya, given in evidence by plaintiffs in the case, vested in him title to said land.

Thirteenth. The court [erred] in instructing the jury or in giving them to understand that in the location of the deed from Pedro Chaboya to Jones and Eldridge, defendants were bound by the patent from the United States to Antonio Chaboya and the proceedings of the United States courts between the said Antonio Chaboya and the Government in relation to his claim and the boundaries of his land.

Fourteenth. The court erred in instructing the jury that what was and is the lands of Pedro Chaboya must be determined by the petition of Pedro Chaboya to Governor Alvarado and the espediente thereto attached.

Fifteenth. The court erred in instructing the jury that what was and is the lands of Pedro Chaboya must be determined by the petition of Pedro Chaboya to Governor Alvarado and the espediente thereto attached, and the petition of said Pedro Chaboya to the United States district court of date of June 15th, 1857.

236 Sixteenth. The court erred in instructing the jury that the northern line of the land named in the deed from Pedro Chaboya to Jones and Eldridge was a line drawn fifteen hundred varas north from the old house of Pedro Chaboya.

Seventeenth. The court erred in refusing to instruct the jury that the confirmation by the district court of five-hundred-acre lot number six to Pedro Chaboya did not confer upon him any title to or interest in said lot.

Eighteenth. The court erred in refusing to instruct the jury that the land conveyed by Pedro Chaboya to W. Claude Jones and Eldridge was equal to that contained in a quadrangular figure measuring one-half of a league on each side.

Nineteenth. The court erred in refusing to instruct the jury that the grant by Alcalde Dimmick to Pedro Chaboya vested no title in Chaboya, and that the confirmation of that claim by the United States district court did not come within the exception in the decree of the United States Supreme Court to the mayor and common council of the city of San José.

Twentieth. The court erred in refusing to instruct the jury that the decrees of confirmation in evidence in the case related to the date of the filing of petitions in the land commission, and that as the claim of the city was presented before that of Pedro Chaboya, the city was deemed in law to have the prior confirmation.

237 Twenty-first. The court erred in refusing to instruct the jury that the title of the defendants claiming under the city of San José to five-hundred-acre lot number six was superior to the title of the plaintiffs under the confirmation to Pedro Chaboya.

Twenty-second. The court erred in refusing to instruct the jury that if the land conveyed to Jones and Eldridge could be so located as to join the lands of the Higueras and Antonio Chaboya it should be so located, although the lands of the Higueras might be on the east and Chaboya on the south, instead of the lands of the Higuera and Chaboya on the east.

Twenty-third. The court erred in instructing the jury that the line of Antonio Chaboya's land as claimed by him was the Punta del Roblar

near the Coyote Creek, and that his western line was the Coyote Creek, and was necessarily the eastern line of the lands of Pedro Chaboya, and that his boundary on the east was the Coyote Creek extended to intersect the line of the lands of the pueblo of San José.

PECKHAM & PAYNE, AND HOUGHTON,
Attorneys for Defendants.

Statement filed October 19th, 1869.

JNO. B. HEWSON, *Clerk*,
By U. E. SQUIRES, *Deputy*.

238 Amendments filed December 31st, 1869.

JNO. B. HEWSON, *Clerk*,
By U. E. SQUIRES, *Deputy*.

Stipulation settling statement.

(Title of court and cause.)

It is stipulated and agreed that the defendants in said cause filed their statement on motion for a new trial thereof on the 19th day of October, 1869; that the plaintiffs filed amendments thereto on the 31st day of December, 1869; that the statement was thereupon settled by the agreement of the parties; and that the foregoing is a full, true, and correct engrossed statement on motion for a new trial of said cause as settled and agreed to by the parties.

And it is agreed that the maps, diagrams, and documents referred to in said engrossed statement may be read and referred to on the hearing of said motion, and shall constitute a part of said statement as fully as though set out therein at length, and shall be set out in full in the transcript on appeal.

September 29th, 1870.

PECKHAM & PAYNE, AND
S. O. HOUGHTON,
For Defendants.

The above certificate is correct, and we subscribe thereto, sav-
239 ing, however, all rights arising from the fact, as we claim, that said motion is not in time.

THO'S BODLEY,
W'M MATHEWS,
Attorneys for Plaintiffs.

29TH SEPTEMBER, 1870.

[Map "E," Charles T. Healey.]

[Here follows map marked page 239.]

It is hereby certified that the annexed map correctly shows the location of the site of the Old Juzgado, formerly standing in the center of the old Plaza of the Pueblo de San José, in the county of Santa Clara, in the State of California, represented upon said map at the point marked "A" in red.

The green lines "G," "H," "I," and "J" represent four square leagues of land located in accordance with the cardinal points of the compass, the Old Juzgado being in the center.

The line marked "M" indicates one league from the Juzgado, measure' along the Monterey road.

The lines "C," "D," and "E" represent the Rancho San Juan Bautista, and the lines "F," "K," and "L," the Rancho de Yerba Buena.

The site of Pedro Chaboya's old house is indicated at the point marked "B."

The location of the Ranchos de los Coches, Pala, and Santa Terese are also correctly shown.

CHARLES T. HEALEY,
City Surveyor.

CITY SURVEYOR'S OFFICE, *San José, July* 21, 1862.

240 I, George E. Whitney, clerk of the circuit court of the United States for the district of California, and ex-officio clerk of the district court of the United States in and for said district, hereby certify that the foregoing is a full and true copy of the certificate and map in the above-entitled action, filed in my office on the 6th day of August, A. D. 1868.

Attest my hand and the seal of said district court, this 2d day of January, A. D. 1869.

[SEAL.] GEORGE E. WHITNEY, *Clerk*,
By H. F. LARDNER, *Deputy Clerk*.

(Indorsed:) Map and explanation of C. F. Healey. The United States v. Pedro Chaboya. No. 192.

(Indorsed:) Filed Aug. 6th, 1862. W. H. Chevers, clerk.

Deposition of Antonio Suñol.

United States district court, northern district of California.

THE UNITED STATES }
v. }
PEDRO CHABOYA. }

SAN FRANCISCO, *June 19th*, 1857.

On this day, before J. Edgar Grymes, a commissioner special and referee of the United States for the northern district of California,
241 duly authorized to administer oaths, etc., etc., came Antonio Suñol, a witness produced on behalf of the claimants in case No. 192, being an appeal from the board of commissioners to ascertain and settle the private land-claims in the State of California, in case No. 701, on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: W'm Blanding, esq., U. S. dist. att'y, and John H. Sanders, esq., att'y for claimants.

Question by claimants' counsel:

First question. What is your name, age, and place of residence?

First answer. My name is Antonio Suñol; sixty years; and I reside at the Pueblo of San José.

Second question. How long have you resided in San José.

Second answer. I have resided there for forty years.

Third question. Did you hold any official position there; and, if so, what?

Third answer. I was sub-prefect for four years.

Fourth question. Do you know the petitioner in this case, Pedro Chaboya?

Fourth Answer. I have known the petitioner, Pedro Chaboya, for forty years.

Fifth question. Where has he lived since 1837?

Fifth answer. He has lived since 1837 at the ranch called "La Poza de San Juan Bautista," where he now resides.

242 Question. Are you acquainted with the place called "La Poza de San Juan Bautista?" If yea, what are its boundaries?

Answer. I am acquainted with said ranch. Its limits are on the west by the lands of Augustin Narvaez, on the south by the ranch of Augustin Bernal, on the east by the lands of Antonio Chaboya, and on the northwest by the lands of the pueblo. The "Arroyo de Coyote" divides the lands of Antonio Chaboya from those of this ranch.

Question. Did Pedro Chaboya have any improvements on this place; and, if so, what were they?

Answer. He had two or three houses on the place. Some of the lands were fenced since 1837. He is living in one of those houses now. He had four or five hundred acres fenced, which he always cultivated up to the present time. These inclosures were on various parts of the ranch, and some of them still exist. He has sowing [in] them this year. He has had a considerable number of cattle, five or six hundred head, since 1837, to within two years ago, when he was obliged to remove them on account of robbery. He has a wife, seven or eight children, who lived there, and still live there, except two or three of his sons, who are away guarding his cattle. The Bernales and the Narvaez were living

243 on their ranchos before Chaboya took possession of his rancho. The limits of these ranchos were well known and recognized. At the rodeos of these neighboring ranchos they mutually recognized the limits of these ranchos. The recognition of limits were those already above given. I think the land contained in those limits was, more or less, a league in extent. The pueblo during the whole of [the] time Chaboya has resided there never molested him or denied his title. I knew Juan B. Alvarado personally in 1839. He was then governor of California. I also knew José Castro in 1839. He was at that time a prefect.

Cross-examination:

Eighth question. How do you [know] the limits of this ranch as you have stated?

Answer. I know the limits by the ranchos which surround it. I know them, also, for this reason, that I had cattle on Augustin Bernal's rancho, and when we had a rodeo we never cross the boundary-line of Chaboya.

Ninth question. When did Chaboya go on that land?

Answer. In 1837.

Tenth question. Have you any interset in this matter in any way, present or contingent?

Answer. I have n e at all.

ANTONIO SUÑOL.

244 Sworn to, subscribed before me June 19th, 1857.

J. EDGAR GRIMES,
Special Commissioner, etc.

I, George E. Whitney, clerk of the circuit court of the United States for the district of California, and ex-officio clerk of the district court of the United States in and for said district, hereby certify that the fore-

going is a full and true copy of the deposition of Antonio Suñol in the above-entitled action, filed in my office on the 22d day of Oct., A. D. 1857.

Attest my hand and the seal of said district court this 28th day of Dec., A. D. 1868.

[SEAL.] GEO. E. WHITNEY,
Clerk,
By H. F. LARDNER,
Deputy Clerk.

(Indorsed:) Filed September 29th, 1870. Jno. M. Littlefield, clerk, by W. B. Hardy, deputy.

Order overruling motion for a new trial.

THURSDAY, *September 29th*, 1870.

Court met pursuant to adjournment.

Present, Hon. Sam. Bell McKee, judge; Jno. M. Littlefield, clerk, and N. R. Harris, sheriff.

When the following proceedings are had, to wit:

245 (Title of cause.)

In this cause now come the defendants, and having filed the statement on motion for a new trial herein, as agreed upon by the counsel for the respective parties, and submit their motion for a new trial, the plaintiffs likewise appear and objects that the said motion has not been prosecuted with due diligence.

And said motion and said objections having been considered by the court, the said objections were overruled by the court; to which ruling plaintiff excepted; and said motion for a new trial is also denied by the court upon the merits; to which ruling of the court in denying their said motion the defendants excepted.

It is further ordered by the court, on motion of the defendants, that all proceedings herein be stayed twenty days.

McKEE, *Judge.*

Notice of appeal.

(Title of court and cause.)

You will please take notice that the defendants in the above-entitled action hereby appeal to the supreme court of this State from the judgment therein made and entered in the said district court on the 16th day of September, A. D. 1869, in favor of the plaintiffs in said
246 action and against said defendants, and from the whole thereof; and also from the order made in said cause denying defendants' motion for a new trial thereof on the 29th day of September, 1870.

Dated this seventeenth day of October, A. D. 1870.

PECKHAM & PAYNE, AND
S. O. HOUGHTON,
Attorneys for Defendants.

To the clerk of said district court, and Thomas Bodley and W'm Mathews, attorneys for plaintiffs.

Filed this 18th day of October, 1870.

JNO. M. LITTLEFIELD, *Clerk*,
By W. B. HARDY, *Deputy Clerk.*

Service of the within notice acknowledged this 18th day of October, 1870, the same having been first filed in the cause in which it is entitled.

THO'S BODLEY AND
W'M MATHEWS,
Attorneys for Plaintiffs.

Clerk's certificate.

(Title of cause.)

STATE OF CALIFORNIA,
County of Santa Clara, ss:

I, John M. Littlefield, county clerk, and ex-officio clerk of the
247 district court of the third judicial district of the State of California in and for the said county of Santa Clara, do hereby certify the foregoing printed transcript on appeal to be correct, and that the papers and orders therein contained are true, full, and correct copies of their originals now on file and of record in said court in said cause.

And I hereby further certify that undertakings on appeal in due form, conditioned according to the statute in such case provided, and in the penal amounts fixed by order of the court herein, and for the payment of costs on appeal, were filed by said appellants within the statutory time in said cause.

In witness whereof I have hereunto set my hand this seventeenth day of November, A. D. 1870.

[SEAL.] JOHN M. LITTLEFIELD, *Clerk*,
By L. F. EASTIN, *Deputy Clerk.*

In the supreme court of the State of California, January term, A. D. 1875.

DAVID UMBARGER ET AL., RESPONDENTS,
vs.
PEDRO CHABOYA ET AL., APPELLANTS.

248 On appeal from the district court of the third judicial district in and for the county of Santa Clara.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Wallace, C. J.; Crockett, J.; Niles, J., and McKinstry, J., concurring; Rhodes, J., dissenting.

Whereupon, it is now considered, ordered, adjudged, and decreed by the court here that the judgment and order of the district court of the third judicial district, in and for the county of Santa Clara, in the above-entitled cause, be, and the same is hereby, affirmed, with costs, as of the day of the last submission of the cause in this court.

UMBARGER
vs.
CHABOYA. No. 2691. Filed March 15.

This is an action of ejectment, brought to recover a tract of land in Santa Clara County, lying southerly of the city of San José, known as

lot numbered six of the 500-acre lots, so called. At the trial the plaintiffs had judgment, from which judgment, and also from an order
249 denying their motion for a new trial, the defendants bring the present appeal.

The plaintiffs claim the premises by title derived from one Pedro Chaboya, who was the confirmee thereof under certain proceedings taken by him before the district court of the United States, pursuant to a private act of Congress, passed April 25, 1862, entitled "An act to authorize the district court of the United States for the northern district of California to hear and determine upon its merits the claim of Pedro Chaboya to a certain tract of land in California, called La Posa San Juan Bautista." (Private acts of the Thirty-seventh Congress of the United States, page 70.)

The defendants claim by title derived from the authorities of the city of San José, which city, as the successor of the former pueblo of that name, was the confirmee of a large area of lands, embracing the premises here in controversy within its exterior limits as confirmed; but there was expressly excepted out of the tract confirmed to the city certain ranchos and smaller tracts designated by name, and also "such other parcels of land as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall here-
250 after be finally confirmed to parties claiming thereunder by said tribunals in proceedings now pending therein for that purpose;" all of which said excepted parcels of land were included, in whole or in part, within the boundaries mentioned in the decree, but were excluded from the confirmation to the city.

The district court of the United States, pursuant to the private act of April 25, 1862, adjudicated the claim of Pedro Chaboya, and in November, 1862, rendered a decree rejecting his claim to the tract called "La Posa Juan Bautista," in the private act of Congress mentioned, except five hundred acres thereof, as to which latter tract, mentioned in the decree as "the same five hundred acres allotted to said Pedro Chaboya by the authorities of San José and accepted by him," his claim was confirmed, and upon appeal subsequently taken by Chaboya, this decree was affirmed by the Supreme Court of the United States. (Vide 2d Black's R. S. C. U. S., in which the history of the claim of Chaboya is detailed at length.)

1. At the trial of the action the plaintiffs, for the purpose of establishing the title of Chaboy to the premises in controversy, offered to read in evidence to the jury the decree of the district court of November, 1862, just referred to. To this offer the defendants made the objection that the said decree was absolutely void for want of jurisdiction in the
251 district court to render it; but this objection was overruled, and the decree admitted in evidence, and the action of the court below in this respect, having been excepted to by the appellants, presents the first point to be considered upon this appeal.

It is asserted, in support of the objection, that the jurisdiction of the district court in this instance was derived wholly from the private act referred to, and must be limited by the terms of that act, and that it therefore has no authority to adjudicate the claim of Chaboya to any lands other than those called "La Posa de San Juan Bautista," and designated in the act itself. To this proposition we accede. It is next insisted that the decree undertakes to confirm the claim, not to the La Posa tract of two leagues or to any part thereof, but to one of the lots known as the five-hundred-acre lots of the municipality of San José.

But we think that this view cannot be maintained. No claim was made by Chaboya for such a lot before the district court. The proceedings terminating in the decree were based upon his petition filed therein on the fifteenth day of June, 1857, and referred to in the private act of Congress as an amended petition filed on that day, and this petition prayed the confirmation of his claim, not to a pueblo lot, but the tract of land mentioned in the act as "La Posa de San Juan Bautista," and described in the petition as bounded by the ranchos Santa Teresa,
252 San Juan Bautista, (Narvaez,) the rancho Yerba Buena y Socayre, (Antonio Chaboya,) and its northerly line being some 1,500 varas from the dwelling-house of the petitioner—the tract which was the subject of the claim being about two leagues in superficial area. The case presented by the petition was, therefore, precisely that one which the private act authorized the court to hear and determine. The proofs by which the petition was supported, or attempted to be, went to show that Chaboya had lived upon the land as far back as 1837, and he claimed that as early as 1839 he had been in possession of the two leagues of land of which he was seeking a confirmation. It also appeared that in the month of May of the latter year he had solicited of the governor a grant of the La Posa tract, alleging that his services in civil and military life entitled him to favorable consideration, and that the citizens of the pueblo unjustly resisted his claim. An informe and report followed in the same month, and an order that Chaboya remain in possession pending the proceedings, but nothing more was done during the Mexican domination in California towards obtaining the grant he asked for. The decree of the district court rejected in part and in part confirmed the claim to the land described in the petition, i. e. the tract of two leagues called La Posa de San Juan Bautista, "and
253 the same is hereby rejected, except for a tract of five hundred acres of land, being the same five hundred acres allotted to said Pedro Chaboya by the authorities of San José, and accepted by him, which said tract of five hundred acres is hereby confirmed to said Pedro Chaboya." The five hundred acres confirmed to Chaboya were in fact within the exterior limits of the two leagues described in the petition, and were confirmed as a part of that tract, the reference to it as being the same tract allotted to him by the San José authorities being a mere identification of that portion of the La Posa tract which was confirmed to him. We are, therefore, of opinion that the district court of the United States did not exceed its jurisdiction in rendering the decree in question, and that the objection to its introduction in evidence taken on that ground was correctly overruled.

3d. In order to establish the title of their grantor, the city of San José, the defendants offered in evidence the final decree of confirmation rendered in favor of the city, but this was excluded and an exception reserved to the ruling of the court. The objection taken was that the premises in controversy, appearing to have been confirmed to Chaboya, were thereby in terms excepted out of the confirmation to the city. The argument on the part of the defendants is that they or their
254 grantors, the authorities of the city of San José, were "third persons" within the meaning of the act of Congress of March 3, 1851, to provide for the settlement of private land-claims in California, and were therefore persons whose rights were not concluded by the confirmation to Chaboya; that hence it was competent for them to prove in this action that the confirmation to Chaboya was not based upon a grant of the lands so confirmed, but that his claim was a sheer pretence and fabrication upon his part, though successfully imposed upon the

authorities of the United States. But the question thus presented by the appellants is not res integra. It was determined against them in this court in Bernal vs. Lynch, (36 Cal., 135,) and upon error in the same case in the Supreme Court of the United States in Lynch vs. Bernal, (9 Wallace, 315.) The premises in controversy in that case were situate in the city and county of San Francisco, and within the limits defined by the Van Ness ordinance, and the defendants, and those under whom they claimed, having been in actual possession on and before the first day of January, 1855, and continuously since then till 1867, when the action was tried, claimed title through the ordinance, the act of the legislature of March 11, 1858, ratifying it, and the act of Congress of July 1st, 1864, relinquishing to the city the title of the United States for the uses and purposes specified in the ordinance, with the pro-
255 viso "that the relinquishment and grant by this act shall in no manner interfere with or prejudice any bona-fide claims of others, whether asserted adversely under rights derived from Spain, Mexico, or the laws of the United States, nor preclude a judicial examination and adjustment thereof." The plaintiff, in that action, relied upon a confirmation obtained upon a supposed concession of the premises alleged to have been made to one Bernal in 1834; but the court found that in point of fact no such concession had been made, and that the claim of Bernal "was without any valid foundation in law or equity;" it was, however, held, both in this court and afterwards in the Supreme Court of the United States, upon error brought, that neither the existence nor the validity of the claim, confirmed to the widow and heir of Bernal, could be properly brought in question in the action. It results upon the rule announced in that case that there was no error committed in excluding the confirmation to the city in this case.

3d. In the deed of Pedro Chaboya to Jones, the land conveyed was described as abutting on the east upon the lands of Antonio Chaboya. It is claimed by the defendants that the western line of the lands of Antonio Chaboya, as understood to exist at the delivery of the deed, and not the true western line of those lands, as subsequently ascer-
256 tained and fixed by the authorities of the United States, is to be taken as the eastern line of the lands conveyed to Jones. If this construction be adopted, it will follow that the only lands conveyed to Pedro Chaboya would be not his own but those of his brother Antonio.

But upon settled rules of construction, the call for the lands of Antonio Chaboya must be understood as a call for lands to which Antonio had title, and not a call for other lands supposed at the time to be his.

The case of Cornell vs. Jackson, (9 Met., 150,) determined in 1845, is directly in point upon the question, and is well supported by numerous other authorities. It was an action of covenant broken, and the particular call in question was, * * * "on the north by the lands of Joseph P. Tolman." This call was claimed by the plaintiff in that action to have reference to a conventional line agreed upon by Tolman in 1822, some five years before the delivery of the deed, by which conventional line the southern line of his lands had been thrown considerably to the northward of its true position, and in accordance with which conventional line Tolman was in occupation in 1827, when the deed in question was delivered. In 1843, in certain actions, in which the widow of Tolman and her grantee were the defendants, they had recovered against other parties the premises lying between the conventional line and
257 the true line of Tolman, it having been adjudged in those actions that no estoppel had arisen by reason of the fixing of the conventional line. Upon these facts it was held by Shaw, C. J., at the trial,

that the call for the land of Joseph P. Tolman "must be taken as a call for his true, and not for the conventional line—must be construed to mean the land of which said Tolman had title, and not the conventional line agreed on by parol—although it was supposed at the time that the conventional line was the true line of Tolman's title, and although the southerly line of the Tolman land was established long afterwards." This ruling of the chief justice at the trial was afterwards unanimously affirmed by the supreme judicial court, M'r Justice Wilde, in delivering the opinion of the court, observing that the question was not what land was supposed to be conveyed, but what land was actually conveyed, and that that question was to be determined by the description in the deed. He adverted in this connection to the fact that no reference had been made in the deed to the conventional line, nor any attempt to prove that at the time of its delivery the conventional line was pointed out as being the boundary of the land conveyed, and concluded that "in the absence of any such proof we think it clear that when a lot of land
258 is conveyed, describing it as bounded by an adjoining lot, the true dividing-line between those lots must be considered as referred to as a boundary of the land conveyed."

It results from this view that the offer of the defendants to show that the western line of the lands of Antonio Chaboya was understood in the year 1850 to be to the eastward of its position, as subsequently ascertained and fixed by the authorities of the United States, was correctly denied by the court below.

Judgment and order denying new trial affirmed as of the day of the last submission of the cause in this court. Remittitur forthwith.

WALLACE, C. J.

We concur.

CROCKETT, J.
NILES, J.
M'KINSTRY, J.

I dissent from the argument and conclusion of the chief-justice upon the third point of his opinion.

RHODES, J.

259 In the supreme court of the State of California, January term, 1875.

MONDAY, *March 15th.*

UMBARGER ET AL., RESPONDENTS,
vs.
CHABOYA ET AL., APPELLANTS. } No. 2691.

On motion of Reynolds, ordered that remittitur be stayed 15 days, to enable the appellant to perfect writ of error to the Supreme Court of the United States.

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the foregoing 259 pages contain a full, true, and correct copy of the transcript on file, opinion rendered, and judgment and order staying proceedings thereon, entered in the foregoing entitled action, on appeal from said third district court to this court; to which are also annexed a copy of the writ of error, citation, and bond, allowed, signed, and approved by the chief-justice of this court.

Witness my hand and the seal of said court this thirtieth day of July, 1875.

[SEAL.] GRANT I. TAGGART, *Clerk*,
By ALLEN TILLINGHAST, *Deputy*.

(Indorsement on cover:) No. 158. Pedro Chaboya, Salvador Chaboya, et al., plaintiffs in error, vs. David Umbarger, Dennis Leahy, William Swall, et al. California sup. court. Filed 6th October, 1875.

No. .....

IN THE SUPREME COURT

OF THE

UNITED STATES.

CHABOYA, et Als.,

Plaintiffs in Error,

VS.

UMBARGER, et Als.,

Defendants in Error.

Brief for ~~Defendants~~ Plaintiffs in Error.

S. O. HOUGHTON,
AND
JOHN REYNOLDS, } OF COUNSEL.

SAN JOSE:
COTTLE & WRIGHT, PRINTERS, 388 FIRST STREET.
1877.

IN THE

Supreme Court

OF THE

UNITED STATES.

CHABOYA, ET ALS.,
Plaintiffs in Error,

vs.

UMBARGER, ET ALS.,
Defendants in Error.

STATEMENT OF THE CASE.

The plaintiffs claim to be the owners and tenants in common of an undivided one-third of 500 acre lot number 6 of the Pueblo lands of the former Pueblo de San Jose, lying in the County of Santa Clara, State of California, and seek by this action to recover possession of said alleged interest.

Both plaintiffs and defendants claim title to said lot 6 under decrees of confirmation by this Court, of claims presented under the act of Congress, approved March 3d, 1851, creating a Board of Commissioners to adjudicate private land claims in California.

The plaintiffs' claim of title is founded upon the following proceedings.

March 2d, 1853, Pedro Chaboya presented for confirmation to said Board of Commissioners a claim for a tract of land described in his petition as lying in the County of Santa Clara, containing two leagues.

In support of this petition he failed to produce or prove any grant, and his claim was rejected,—whereupon he appealed to the District Court of the United States for the Northern District of California, and filed in said Court on the 15th day of June, 1857, a supplemental petition in which he set up a claim for another and different tract of land called La Posa de San Juan Bautista.

No grant for this last named tract was produced or proved by him, but oral testimony was given on his behalf showing that he had a house upon and occupied said tract, and claimed possession thereof under a petition made by him to Governor Alvarado for a grant thereof in 1839.

For the purpose of defeating his claim under said petition and alleged possession thereunder, the United States gave in evidence divers documents showing that Pedro Chaboya had occupied the place called Posa de San Juan Bautista by the license and permission of the municipal authorities of the Pueblo de San Jose, for two years from the 29th of February, 1840, paying to said Pueblo an annual tax of six dollars, and that afterwards, on the 3d day of March, 1849, when the common lands of said Pueblo were divided up among the heads of families of said Pueblo, there was allotted and granted to Pedro Chaboya by the Alcalde of said Pueblo as a perpetual loan, said 500 acre lot number 6, subject to the payment of an annual tax of three dollars and divers other conditions.

It was proved by the United States that his house was on said 500 acre lot number 6, and it was claimed on behalf of the Government that his possession was limited to that lot, and was held, not under the government of California, but under the municipality of the Pueblo or town of San Jose.

August 29, 1861,said District Court adjudged said claim of Pedro Chaboya invalid, and dismissed his petition for want of jurisdiction, and on appeal this Court, at its December Term, 1862, affirmed the decree of said District Court.

April 25th, 1862, an act was passed by Congress authorizing and requiring the said District Court to hear and decide upon the merits the said claim of Pedro Chaboya to the tract of land described in his amended petition filed June 15th, 1857, called La Posa de San Juan Bautista, in the same manner and with the same jurisdiction as if the claim to said tract had been duly presented to the Board of Land Commissioners under the provisions of the Act of Congress of March 3d, 1851, and an appeal had been duly taken therefrom to said District Court, and permitting all testimony before then taken in relation to said claim on behalf of claimant or the United States to be read on the trial, subject to all just exceptions, and also permitting either party to introduce any further testimony relative to the validity or extent of said claim.

Under said Act claimant filed his petition in said Court asking that it proceed to hear and decide his claim, according to the provisions of said Act, but no further evidence than that already before the Court was introduced, showing a grant to said Pedro Chaboya.

Nov. 6th, 1862, said District Court made a decree in said cause, adjudging that the claim of Pedro Chaboya for the place called La Posa de San Juan Bautista, described in his amended pe-

tition filed in said Court June 15th, 1857, was not valid, and rejecting the same, except for a tract of 500 acres of land, described in said decree as "being the same 500 acres allotted to said Pedro Chaboya by the authorities of San Jose, and accepted by him, which said tract of five hundred acres is hereby confirmed to the said Pedro Chaboya."

From this decree Pedro Chaboya appealed to this Court, but no appeal was taken by the United States, and at the December term 1862, this Court affirmed the decree of District Court.

The tract of land described in said petition filed before said Land Commissioners, is located in the present county of Alameda, and does not include said 500 acre lot.

The tract described in the supplemental petition filed in said District Court June 15th, 1857, is located in the county of Santa Clara, and includes the whole of said lot.

No other petition than those above mentioned was ever filed by said Pedro Chaboya before said Land Commissioners or said Court.

By his deed of bargain and sale, dated Dec. 26th, 1850, Pedro Chaboya conveyed to W. C. Jones and T. N. Eldredge a parcel of land described as being the north-east half league of the

land or rancho of the said Pedro Chaboya, bounded on the east by the lands or ranchos of the Higueras and Antonio Chaboya, on the north by the lots or lands of the Pueblo de San Jose Guadalupe, and on the south and west by the lands of the said Pedro Chaboya, the same to be as near in a square form as possible, and according to rectangular lines, and the same to contain exactly one half of a league square, the said land being situated in the county of Santa Clara, State of California.

Oct. 27th, 1858, W. C. Jones conveyed to Edson Adams all his interest in said land, so conveyed to him by Pedro Chaboya, and by mesne conveyances an undivided 442-740th of whatever interest was conveyed to said Adams has passed to and is held by the plaintiffs.

The defendants claim title to said 500 acre lot, derived to them from the Mayor and Common Council of the City of San Jose.

June 14th, 1852, the Mayor and Common Council of the City of San Jose as successors in interest to the former Pueblo de San Jose, presented a claim for certain Pueblo lands to said Board of Commissioners, which included said 500 acre lot 6, and after divers proceeding had therein, said claim was finally confirmed on appeal by this Court

to said Mayor and Common Council with certain exceptions.

On the trial it was admitted by plaintiffs that whatever title the City of San Jose had in said 500 acre lot under said confirmation had passed to and become vested in the defendants.

The plaintiffs claim that the said confirmation of said 500 acre lot 6, vested in Pedro Chaboya's title thereto.

The defendants insist that as no claim was ever presented for said lot, it was not before the Court for confirmation; and that had a claim therefor been presented, the Court had no jurisdiction to confirm or reject the same, it being a town lot, the claim for which could only be presented by the municipality of San Jose; and further that the Act of Congress of April 25th, 1862, only authorized the Court to hear and decide upon the particular claim therein mentioned.

It is claimed on behalf of the plaintiffs that the descriptive call in the deed from Pedro Chaboya to Jones and Eldridge "*bounded on the east by the lands or ranchos of the Higueras and Antonio Chaboya,*" is the patent line of said rancho of Antonio Chaboya, and not his western line as claimed by him, and as generally known and recognized before and at the time said deed was made.

That the descriptive call "*on the north by the lots or lands of the Pueblo de San Jose Guadalupe*," is a line drawn fifteen hundred varas north of the old house of Pedro Chaboya.

The defendants claim that the western line of Antonio Chaboya as generally understood and recognized, and as claimed by him at the time said deed was made, is the true line of the land then owned by him, and is from two to two and a half miles east of his patent line, which is the Coyote Creek; and that the north line of the tract described in said deed is the south line of the town lots of San Jose, and corresponds with Reed street as shown on "Diagram No. 4, p. 112."

Locating said north and east descriptive calls as claimed by plaintiffs would make the description in the deed include all of 500 acre lot 6, but locating them as claimed by defendants, all of the lot is excluded therefrom.

Plaintiff on the trial offered and read in evidence a copy of an expediente of Antonio Chaboya for the Rancho Socayre y Yerba Buena, for the purpose of proving the eastern boundary of said tract described in the deed from Pedro Chaboya to Jones and Eldredge, and in connection therewith the patent for Yerba Buena, and offered no other testimony upon that point, except that

contained in the deposition of Antonio Sunol, taken in the case of The United States vs. Pedro Chaboya, to which none of the parties to this action except Pedro Chaboya were parties or privies, which deposition was objected to on that ground. It was admitted and read in evidence upon proof that the witness was dead. Defendants excepting.

The defendants proved that the 500 acre lots of the Pueblo de San Jose extended two or three miles eastward of the Coyote Creek, and that the west line of Antonio Chaboya as claimed by him, and as understood and recognized in 1847, was coincident with the eastern line of said 500 acre lots, and they offered to prove at the trial that a survey and measurement was made under the direction of the Alcalde of San Jose, in 1847, of the line between the Rancho Yerba Buena and the Pueblo lands; that Antonio Chaboya was present, and pointed out his boundaries and corners, and that the line was run in accordance with his direction, and that said line was two miles east of the Coyote river; which testimony was excluded by the Court, defendants excepting. The Court ruling in rejecting said testimony that "it is for the Court to construe the expedientes of the rancho of Antonio Chaboya, and from those and other

evidences of title, together with the patent, to declare what were the boundaries of his rancho."

Defendants then offered to prove that Antonio Chaboya never did claim, prior to the organization of the land commission, that his rancho Yerba Buena, extended to within two miles of the Coyote creek, which testimony was excluded, and the defendants excepted.

The defendants gave in evidence the petition of the Mayor and Common Council to said Land Commission, filed June 14th, 1852, praying confirmation of the Pueblo lands, the decrees of said Commission, of the United States District Court, and of this Court confirming the same, which it was admitted included said 500 acre lot 6.

Upon motion of counsel for plaintiffs, all these documents were stricken out by the Court on the ground that they were irrelevant, and the official survey of the lands so confirmed was excluded on the same grounds—defendants excepting.

Defendants then produced and proved the original expediente of Antonio Chaboya, filed by him before the Land Commission, a copy of which had been given in evidence by plaintiffs to prove the western boundary of Antonio Chaboya and the eastern boundary of lands claimed by Pedro Chaboya; to the reading of which plaintiffs objected.

Counsel for defendants offered to prove in connection with said expediente that it was a private document which came from the hands of Antonio Chaboya, and not from the government archives; that in 1850 Antonio Chaboya had possession, by permission of the Mexican government, of a tract of land, the line of which was two miles from the Coyote creek; that said set of papers purporting to be a grant from Alvarado of the Yerba Buena rancho, bounded by the Coyote were forged and fabricated, and that by means of those forged papers a confirmation was obtained before the United States tribunals, and the patent for said rancho procured to be issued, bounding on the Coyote, and thereby extending the boundaries thereof from two to two and a half miles to the west of the place where they were understood to be at the time said deed from Pedro Chaboya was made to Jones and Eldredge, all of which testimony was excluded by the Court, defendants excepting.

Defendants offered in evidence the petition of Antonio Chaboya filed before said Land Commission for a confirmation of his claim, and which set forth as the foundation of his right to a confirmation, a decree of Governor Figueroa, made Nov. 25th, 1833, and set up no other claim of title. Which document was excluded by the Court, defendants excepting. Defendants then produced

said Figueroa document, and proved that it contained no reference to any boundaries or quantity, that the description was "a place near the Yerba Buena."

Defendants then offered proof that said Alvarado expediente, dated in 1840, was made after the year 1852. The Court refused to admit such proof, the defendants excepting. The jury under the instructions of the Court, found a verdict for plaintiff, and judgment was entered accordingly.

Defendants moved for a new trial upon an agreed statement of the case, which was denied, and defendants appealed to the Supreme Court of the State of California from the judgment, and from the order denying a new trial, which Court affirmed the judgment and order, and the cause was brought to this Court on a writ of error.

ASSIGNMENT OF ERRORS.

1—Error in admitting and allowing plaintiffs to read in evidence the deposition of Antonio Sunol, against the objection of defendants that it was not taken in this case, but in the case of the United States vs. Pedro Chaboya.

2—In refusing to admit the testimony offered by defendants to show that the west line of Antonio Chaboya was co-incident with the east line of

the 500 acre lots of the Pueblo de San Jose; the defendants having first proved that said line of said lots was two or three miles east of the Coyote creek, and in rejecting the testimony offered to show the location of his said line as pointed out and claimed by him in 1847, when called upon to do so by the Alcalde of San Jose.

3—In refusing to permit defendants to prove that Antonio Chaboya never did claim, prior to the organization of the Land Commission, that said Rancho Yerba Buena extended to within two miles of the Coyote river.

4—In striking out and excluding as evidence the petition of the Mayor and Common Council of San Jose to the Land Commission, and the several decrees confirming their claim to the Pueblo lands of San Jose.

5—In refusing to allow defendants to read in evidence the original of the copy of the expediente of Antonio Chaboya for the Rancho Yerba Buena, read in evidence by plaintiffs, and to prove that it came from the hands of Antonio Chaboya, and not from the government archives; that the land Antonio Chaboya possessed by permission of the Mexican government in 1850, was two miles from the Coyote river; and that said papers purporting to be a grant from Alvarado to him,

bounding his rancho on the Coyote creek, were forged and fabricated, and that by means of those forged papers a confirmation was obtained and patent procured from the United States extending his boundaries to the Coyote creek, and from two to two and a half miles from where they existed at the time said deed was made by Pedro Chaboya to Jones and Eldredge.

6—In refusing to permit the defendants to read in evidence the petition of Antonio Chaboya to the Land Commission.

7—In refusing to permit the defendants to prove that said Alvarado expediente was made after the year 1852.

8—In refusing to permit defendants to prove what was generally understood by the people of San Jose and vicinity prior to 1857 or 1858 as Antonio Chaboya's west boundary.

9—In refusing to permit the defendants to prove by the witness Joaquin Higuera the western boundary of the Pala Rancho.

10—In refusing to permit defendants to prove by the witness Joaquin Higuera the location of the lines of Antonio Chaboya's land, prior to the organization of the Land Commission.

11—In instructing the jury that the decree of

confirmation of five hundred acre lot number six to Pedro Chaboya, given in evidence by plaintiffs, vested in him title to said land.

12—In instructing the jury that the plaintiff had connected himself by mesne conveyances with the deed from Pedro Chaboya to Jones and Eldredge.

12—In instructing the jury or giving them to understand that in the location of the lands described in the deed from Pedro Chaboya to Jones and Eldredge, defendants were bound by the patent from the United States to Antonio Chaboya, and the proceedings of the United States Courts, between the said Antonio Chaboya and the Government in relation to his claim and the boundaries of his land.

13—In instructing the jury that what was and is the lands of Pedro Chaboya must be determined by the petition of Pedro Chaboya to Governor Alvarado, and the expediente thereto attached, and the petition of said Pedro Chaboya to the United States District Court, dated June 15th, 1857.

15—In instructing the jury that the north line of the land named in the deed from Pedro Chaboya to Jones and Eldredge, was a line drawn fif-

teen hundred varas north from the old house of Pedro Chaboya.

16—In instructing the jury that the line of Antonio Chaboya's land as claimed by him, was the Punta del Roblar, near the Coyote Creek, and that his western line was the Coyote Creek, extended to the line of the Pueblo lots or lands.

17—In refusing to instruct the jury that the confirmation of the District Court of 500 acre lot number 6, to Pedro Chaboya, did not confer upon him any title to or interest in said lot.

18—In refusing to instruct the jury that the land conveyed by Pedro Chaboya to W. C. Jones and Eldredge, was equal to that contained in a quadrangular figure, measuring one half of a league on each side.

19—In refusing to instruct the jury that the grant by Alcalde Dominick to Pedro Chaboya vested no title in him, and that the confirmation of that claim by the United States District Court did not come within the exception in the decree of the United States Supreme Court to the Mayor and Common Council of the City of San Jose.

20—In refusing to instruct the jury that the decrees of confirmation in evidence in the case related to the date of the filing of petitions in the

Land Commission, and that as the claim of the city was presented before that of Pedro Chaboya, the city was deemed in law to have the prior confirmation.

21—In refusing to instruct the jury that the title of the defendants, claiming under the City of San Jose to 500 acre lot 6, was superior to the title of the plaintiffs under the confirmation to Pedro Chaboya.

22—In refusing to instruct the jury that if the land conveyed to Jones and Eldredge could be so located as to join the lands of the Higueras and Antonio Chaboya, it should be so located, although the lands of the Higueras might be on the east, and those of Chaboya on the south, instead of the lands of the Higueras and Chaboya on the east.

ARGUMENT.

The title of plaintiffs to the premises in question rests solely upon the confirmation by the Courts of the United States to Pedro Chaboya of 500 acre lot number 6.

The Court below instructed the jury that "This decree of confirmation of the claim of title of Pedro Chaboya vested in him title to the lot; and as the confirmation related back to the date of his

petition to the United States Board of Land Commissioners, he was by virtue of it seized in fee of the lot in December, 1850."

This instruction was erroneous because

First—The confirmation did not confer any title.

Second—If it had such effect it did not relate back to December, 1850.

No claim was ever presented by Pedro Chaboya for a confirmation of 500 acre lot 6, nor did he claim or prove any title thereto.

The tract for which he petitioned a confirmation by the Land Commission, lies in the present county of Alameda, and does not include said lot 6. p. 24.

The tract described in the supplemental petition, filed by him in the District Court, June 15th, 1857, he claimed by virtue of a grant alleged in his said petition to have been made to him in 1839 by Juan B. Alvarado, Governor of California, for the place called La Posa de San Juan Bautista, containing two leagues of land. pp. 12–13, clause X.

The foregoing are the only petitions filed by him. p 28, clause XI.

The confirmation asked for, was not of a claim to lands derived from the Pueblo de San Jose, but of a claim founded upon a grant by the Governor of California, and all the testimony adduced by him was in support of that claim. He failed to prove any grant, and sought to sustain his claim by proof of possession held under his petition to Alvarado dated in 1839. Clause XVIII, p. 19.

All the evidence in relation to the 500 acre lot 6, was adduced by the United States, for the purpose of defeating this claim under his petition to Alvarado, and showing that he held whatever possession he had, at the place called La Posa San Juan Bautista, under the municipal authorities of San Jose. Clause XIII, p. 14–18, and clause XVIII, p. 19.

Had a claim been presented by Chaboya to the Land Commission for a confirmation of 500 acre lot number 6, no valid decree could have been entered by that tribunal confirming it, because section 14 of the act of March 3d, 1851, expressly declares that the provisions of that act "shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town, to which lands may have been granted, for the establishment of a town by the Spanish or Mexican governments," etc.

The special act of Congress of April 25th, 1862, conferred no jurisdiction upon the District Court, that it did not have in cases brought before it on appeal from the Land Commission, and it certainly did not have in such cases any jurisdiction to confirm on appeal a claim of which the Commission did not have jurisdiction, and the same is true of this Court. The jurisdiction of each being the same, and neither having any other powers in the matter of private land claims in California than those conferred by the act of March 3d, 1851.

The Act of April 25th, 1862, p. 20-21, does not in any manner extend the jurisdiction of the District Court, it simply gives that Court the same authority to hear and decide upon the merits, the claim of Pedro Chaboya set up in his petition filed June 15th, 1857, that it would have had, had the same claim been presented to the Land Commission, and regularly brought before it on appeal.

Whenever a new right is created by statute, and the enforcement of such right is committed to a Court even of general jurisdiction, such a Court, *quoad hoc* is an inferior Court, and must pursue the statute strictly.

Cohen vs. Barrett, 4 Cal., 210.

The decree of the District Court rejects the claim of Chaboya set up in his supplemental petition, and adjudges that it is not valid. That is,

it decides that he had no title to the place called La Posa de San Juan Bautista derived to him under a grant from the Mexican government, or by virtue of any possession held under it, and confirms to him "a tract of five hundred acres of land, being the same five hundred acres allotted to said Pedro Chaboya by the authorities of San Jose, and accepted by him."

That decree is only valid so far as the jurisdiction of the Court extended. Beyond that it has no validity whatever. It had jurisdiction to adjudicate the title set up by Chaboya; it decided that claim to be invalid, and so far, the decree is effective. It had no jurisdiction to confirm the town lot, and the decree as to that is simply void.

As there was an entire want of jurisdiction to make any decree relative to the 500 acre lot, and that want of jurisdiction appears from the record, the decree may be attacked collaterally. It appears from the decree that the Court had no jurisdiction in the matter of the town lot, and its judgment relative thereto is void.

Borden vs. Fitch, 15 John R., 141.
Bissel vs. Briggs, 9 Mass., 464.
Haines vs. Hardeman, 14 How., 339.

The Supreme Court of California erroneously construed the decree, as confirming the claim set

up by Chaboya to the extent of five hundred acres. It said in the opinion of this case, "The District Court of the United States, pursuant to the private act of April 25th, 1862, adjudicated the claim of Pedro Chaboya, and in November, 1862, rendered a decree rejecting his claim to the tract called 'La Posa Juan Bautista,' in the private act of Congress mentioned, except five hundred acres thereof, as to which latter tract mentioned in the decree as 'the same five hundred acres allotted to said Pedro Chaboya, by the authorities of San Jose, and accepted by him,' his claim was confirmed."

The decree does not confirm to him five hundred acres of land under and by virtue of the claim set up in his petition. It adjudges that claim to be without validity, as a whole, and confirms, not 500 acres of land to him, held or claimed by him under the title he asserted, but the 500 acre lot set off and allotted to him, by the municiauthorities of San Jose.

The decree does not describe specifically any tract of land as the five hundred acres confirmed to him, but leaves it to be identified by the testimony in the case, and when reference is made thereto, it clearly appears therefrom, that it is Pueblo lot number 6, allotted to him by the Pueblo authorities, which is confirmed, as that is the

only five hundred acre tract anywhere mentioned in the case.

If, however, the confirmation of that town lot be a valid confirmation, it did not operate by relation back to December, 1850, the date of the conveyance made by Pedro Chaboya to Jones and Eldredge. It had no relation back of the entry of the decree itself. Assuming the confirmation to be valid, and as establishing title in Chaboya, his title originated with the decree. It is not founded upon any grant made by the Spanish or Mexican governments, nor upon any valid grant from the Pueblo of San Jose.

There is nothing in the record to identify the land to which the agreement made between the Alcalde Dolores Pacheco, and Pedro Chaboya, dated Feb. 29th, 1840, relates, p. 15, clause XV., with 500 acre lot number 6, and therefore the confirmation of that lot, of necessity rests solely upon the Dominick document, p. 14–15, clause XIII., which was issued by the Alcalde without authority of law, and was therefore utterly void.

That document purports to be a loan forever of said 500 acre lot number 6, of the unoccupied lands of the Pueblo de San Jose, subject to an annual tax of three dollars.

Under the Mexican law, no power is conferred

upon the Alcaldes of Pueblos to dispose of large tracts of the lands of their respective Pueblos.

The *exidos* or common lands proper, of Pueblos, were for the common use of the inhabitants of the Pueblo, and were inalienable. The *dehesas*, or great pasture lands, however, were subject to grant in private ownership by the National, State, or Territorial governments.

The municipality could not alienate, in the sense of passing the fee, except town lots, authorized to be granted to citizens, upon which to erect their dwellings.

The law upon this subject is clearly stated in Dwinelle's Colonial History of California, p. 10, 11, 12, under the titles *Ejidos* or *Exidos*, and *Dehesas*.

See also note to Strother vs. Lucas, 12 Pet., 442.

The Dominick document purports to have been issued in accordance with the decrees of the Junta of the Pueblo de San Jose, and in accordance with the confirming decree of the people of said Pueblo.

The character of the Junta is shown by the record of the proceedings under which it was organized, p. 16–18.

The Mexican laws do not provide for any such

municipal organization as a Junta, and the acts of the body referred to were without any validity.

The officers of Spanish and Mexican Pueblos were, Alcaldes, Regidores, Councilmen and Sindicos, and these composed the Ayuentamientos, or Town Councils, Dwinelle's Col. His. §48, 37.

A five hundred acre lot is not any subdivision of land known to the Mexican law. A grant of the same character as that in question, made in the same way, and by the same authority, was before the Supreme Court of California, in the case of Redding vs. White, 27 Cal., 284, and it was held to be unauthorized and void.

II.

The Court below instructed the jury that: "The plaintiff has connected himself by mesne conveyances with this deed, (the deed from Chaboya to Jones and Eldredge,) and claims that the lot 6 in controversy, confirmed to Pedro Chaboya, is part of the land conveyed by the deed."

That instruction read in connection with those which preceded and followed, given by the Court of its own motion, pp. 93–94, was in effect an instruction that through mesne conveyances from

Jones, the plaintiffs had acquired title to an interest in the land described in that deed.

Chaboya's title, if any, rests solely upon the decree of confirmation, which is dated November 6th, 1862.

The deed from Chaboya to Jones and Eldredge is dated December 26th, 1850, and is sufficient to pass an after acquired title, but the deed from Jones to Edson Adams, and that from Adams to Mulford, both dated October 27th, 1858, are mere releases which would not operate to estop the grantees from setting up an after acquired title to the same land described in them.

The plaintiffs, therefore, did not connect themselves with Pedro Chaboya's title.

Gee vs. Moore, 14 Cal. 472.
Kimball vs. Semple, 25 id. 452.
Blanchard vs. Brooks, 12 Pick. 47.
Comstock vs. Smith, 13 id. 116.
Miller vs. Ewing, 6 Cush. 34.

III.

The testimony offered by the defendants to prove the location of the descriptive calls in the deed from Chaboya to Jones and Eldredge was improperly excluded by the Court below. One of

the calls of the tract described in the said deed is, "bounded on the east by the lands or ranchos of the Higueras and Antonio Chaboya." This makes the west line of those ranchos, the east line of the tract described in the deed. To prove the location of that line the plaintiffs gave in evidence a copy of a document purporting to be an expediente and grant by Governor Alvarado to Antonio Chaboya for the rancho Socayre y Yerba Buena, pp. 30–31, and consisting of a petition by Antonio Chaboya, a report by the Prefect, and an alleged grant, pp. 38–39. Said copy of said expediente being produced by plaintiffs from the custody of the County Recorder of Santa Clara County.

This expediente does not mention the Coyote as the western line of the rancho Yerba Buena, but makes the west line thereof "the rancho of the Bernales, (Santa Teresa,) and the point of the Roblar, near the Arroyo del Coyote."

The defendants were entitled to show that the western line of Antonio Chaboya as it was claimed by him, and as it was understood and recognized before and at the time said deed was made, was the true western line of the tract of land possessed and owned by him at that time, for the purpose of identifying the eastern boundary line of the tract called for by said deed from Pedro Chaboya to Jones and Eldridge, and to do this

they first offered proof tending to show the location of the west line of Antonio Chaboya as claimed by him, and as generally recognized before and at the time said deed was made. It was proved by the testimony of the surveyor Healey, that the five hundred acre lots of the Pueblo included all the lands between the ranchos San Juan Bautista, Santa Teresa, Yerba Buena, and Pala, as patented, and about two miles east of the Coyote into the Yerba Buena as patented, and covered all the lands claimed by Pedro Chaboya. p. 53.

The defendants also proved by the witness Weeks, that when the east line of the five hundred acre lots was surveyed and run by the Alcalde of the Pueblo in 1847, the people were called upon to show their respective lines and produce such documents as they could; that Pedro and Antonio Chaboya brought theirs, and that Antoñio brought the Figueroa document, (to which further reference will be made,) that he showed his lines, and was perfectly satisfied, apparently, with the way they were run; that the line of the five hundred acre lots was surveyed in accordance with the lines pointed out by Antonio Chaboya on the ground, and that said line was more than a mile and a half from the Coyote. p. 63. It was also shown by this witness that the oak grove

(Punta del Roblar) was east of the Coyote, and that one of the lines surveyed was run by there. p. 64.

Defendants asked the witness Higuera, "Do you know the boundaries of the Rancho Yerba Buena, claimed by Antonio Chaboya?" and he answered, "Prior to the organization of the United States Land Commission I knew them. I knew them in former times, but do not know how they are since." Plaintiffs objected, and the Court refused to permit the witness to testify as to what the lines were formerly. p. 69.

This was error, as the deed was made before the Land Commission was organized, and the location of the western line of that rancho at that time was a material fact to be proved to fix the location of the eastern line called for by the deed. The same witness testified that he knew of the survey made by Burton, Alcalde of San Jose. The plaintiffs objected to his testifying in relation thereto, and he was not permitted to answer by the Court as to his knowledge thereof. p. 70. This testimony tended to show the location of the line in question, and should have been admitted.

Defendants then offered to show by this witness, that in 1847, John Burton, Alcalde, Weeks as

Secretary, and Hutton, a Surveyor, and others went to make a survey of the line between the rancho Yerba Buena, then claimed and possessed by Antonio Chaboya, and the Pueblo lands of San Jose, being the same survey and running of lines, testified to by Weeks; that they called upon Antonio Chaboya, to point out his boundaries as claimed by him, dividing his lands from the Pueblo of San Jose; that he went upon the lands and pointed out his boundaries, and that the line was run according to his direction and claim; and defendants offered further to prove in connection therewith that said line is two miles east of the Coyote Creek. This testimony was excluded, and defendants then offered to prove "that Antonio Chaboya never did claim, prior to the organization of the Land Commission, that his rancho Yerba Buena extended to within two miles of the Coyote Creek." This was excluded, and the Court in ruling upon it, stated to counsel for defendants, that it was for the Court to construe the expedientes of the rancho of Antonio Chaboya, and from these and other evidences of title, together with the patent, to declare what were the boundaries of his rancho, and limiting the proof by defendants to the location on the ground of any objects called for in the expedientes or patent.—p. 70.

By referring to the expediente of Antonio Cha-

boya, p. 38, it will be seen there is no definite description of his western boundary. His petition to Alvarado is the only document containing any description, and it is there described as "bounded on the west by the ranchos of the Bernales, and the point of the Roblar near the Arroyo del Coyote,—p. 38. It appears from the diagram, p. 48, that the rancho of the Bernales (Santa Teresa), only bounds Yerba Buena at the south-west corner; the point of the Roblar was not a line, and therefore there is no boundary described between that point and his northern boundary, the rancho of Higuera (Pala), called for by his expediente. The defendants had already shown that there was a line east of the Coyote, which was claimed by Antonio Chaboya, and was recognized by the municipal authorities of San Jose, as his boundary at that place, and it was certainly competent for defendants to show where that line was located on the ground. When Pedro Chaboya made the deed to Jones and Eldredge, he described the tract of land he intended to convey thereby, with reference to existing lines, and not with reference to such lines as might thereafter be established. The patent line does not tend even to prove the location of Antonio Chaboya's western line as it existed in 1850. The Coyote Creek is thereby made his boundary on the west, and is a purely arbitrary line, because it is not his line as described in his al-

leged grant. Had the claim of Antonio Chaboya been rejected, and no patent line created, there would have been but one way in which the call of the deed for its eastern line could have been proved, and that was by the same character of testimony offered by defendants to prove that line.

The defendants produced and proved the original expediente of Antonio Chaboya for Yerba Buena, a copy of which had been given in evidence by plaintiffs, and proved that it was filed by the claimant for Yerba Buena, in support of his claim before the Land Commission, March 15th, 1853, and offered the same together with a translation thereof in evidence, pp. 86-88, to which plaintiffs objected and it was excluded.

The defendants then offered to prove in connection therewith, that in 1850, Antonio Chaboya had possession, by permission of the Mexican Government, of a tract of land, and that the line of that land was two or two and a half miles from the Coyote Creek, and that the set of papers (those offered by defendants,) purporting to be a grant from Alvarado of the Yerba Buena rancho, bounded by the Coyote, were forged and fabricated, and that by means of these forged papers, a confirmation had been obtained before the Land Commission, and the Courts, and a patent procured for Yerba Buena, bounding on the Coyote,

throwing the boundaries thereof two to two and a half miles west of where they were understood to be when the deed in question was made.

This testimony was objected to and excluded by the Court. The objection made and sustained being that as the boundaries of Yerba Buena had been fixed by the government of the United States, that action was conclusive upon the question of boundaries, and the validity of the expediente could not be called in question, p. 89.

The proposition of the defendants was not, as it seems to have been understood by the court below, to attack the title of Antonio Chaboya—for it was not in controversy—but to show what was his true western boundary when the deed was made by Pedro Chaboya to Jones and Eldredge.

This objection would have been good, and the ruling of the Court correct, had Antonio Chaboya made a conveyance prior to his confirmation and patent of a tract of land, having for one of his lines his western boundary, for he would not be permitted to show that when he made such conveyance he intended any other than the line of the land to which he had title, for the confirmation and patent would be conclusive, alike upon him and all persons claiming under him.

But it is submitted that the defendants, who

were not parties, and who are not privies to the claim of Antonio Chaboya, or the proceedings had with reference thereto, are not precluded from proving that in the proceedings which culminated in the issue of a patent to Antonio Chaboya, by a fraud practiced by him he procured his rancho to be extended two miles west of where his true line was located at the time the deed was made by Pedro Chaboya, for the purpose of showing the true location of the east line of the tract conveyed by that deed.

The defendants then produced and proved the Figueroa document spoken of by the witness Weeks, as that produced by Antonio Chaboya to the Alcalde in 1847 as his evidence of title, and proved that it specified no quantity of land, gave no boundaries, and that the map accompanying it, purporting to be a map of Socayre and Yerba Buena did not show the Coyote as a boundary.

The defendants then offered to prove that the quantity expressed in the Alvarado expediente for Yerba Buena had been changed from one to six leagues. The testimony was objected to and excluded. The defendants insist that it should have been admitted for the reasons before stated.

The Courts of California seem to have entirely misapprehended the proposition of defendants rel-

ative to the western boundary of Antonio Chaboya. In the third point discussed in the opinion of the Supreme Court of California it says: "It is claimed by the defendant that the western line of the lands of Antonio Chaboya, as understood to exist at the delivery of the deed, and not the true western line of those lands, as subsequently ascertained and fixed by the authorities of the United States, is to be taken as the eastern line of the lands conveyed to Jones." This differs in a very material particular from the defendants' proposition. They asserting that the line as understood and recognized at the date of the deed was the true line, and they offered testimony to prove that by a fraud practiced upon the United States by Antonio Chaboya, he procured his western boundary to be extended two miles or more west of its true position. The case of Cornell vs. Jackson, 9 Met. 150, is an authority for defendants, and not against them.

IV.

The second instruction asked by the plaintiffs and given to the jury, to-wit: "What was and is the rancho and lands of Pedro Chaboya, must be determined by the petition of Pedro Chaboya to Governor Alvarado, and the expediente thereto attached, which said petition and expediente are

set out in section third of the stipulation in evidence, and the petition of said Pedro Chaboya to the United States District Court, of date of June 15th, 1857, and now in section eleven of said stipulation," as well as the instruction which followed to-wit: "That the boundary line of the said lands and rancho claimed by Pedro Chaboya, is a line drawn fifteen hundred varas north of the old house of the said Pedro Chaboya," were improper, as they tended to mislead the jury, and gave them to understand that the descriptive calls of the deed which were in question, were to be determined by the location of the boundaries to which Chaboya claimed title, there being no evidence tending to identify the descriptions as applying to the same land, but on the contrary the deed on its face only purports to be a conveyance of a part of the tract described in the expediente; and further the line fifteen hundred varas north of the house of Pedro Chaboya, was not attempted to be identified with the north line called for by the deed, to-wit: "The lots or lands of the Pueblo de San Jose Guadalupe."

It is shown by the testimony of the Surveyor Healey, that there were two classes of town lots, the five hundred acre lots, and smaller subdivisions, called town lots, and city lots, p. 53. The south line of the five hundred acre lots could not be the

lots or lands called for by the deed, as they extended south as far as the rancho Santa Teresa, and included all the land between San Juan Bautista, Santa Teresa, Yerba Buena, and Pala; in other words, the whole of the two leagues claimed by Pedro Chaboya, under the name of Posa de San Juan Bautista.

That the north line of 500 acre lot number ten, runs north of the line of Reed street; that the city or town lots only extended south as far as the north line of 500 acre lot number ten,—and that taking Reed street as the line of the "lots or lands of the Pueblo," called for by the deed, the description of the half league called for by the deed would not include any part of 500 acre lot 6, the premises in question, pp. 53–54.

In the last instruction given by the Court to the jury, to-wit: "That the line of said Antonio Chaboya's land as claimed by him was the Punta del Roblar, near the Coyote Creek, and that his western line was the Coyote Creek, and was necessarily the eastern line of the land or rancho of Pedro Chaboya, and his boundary on the east was the line of the Coyote Creek, extended to intersect the line of the lots of the Pueblo of San Jose," was erroneous.

This instruction ignored entirely the call of the

deed for the rancho of the Higueras (Pala), on the east, the west line of which as known and claimed before that rancho was surveyed by the United States, conformed very nearly to the present patent line of that rancho, p. 55,—and compelled the jury to adopt for the entire east line of the tract conveyed, the Coyote Creek. Such construction should have been given to the descriptive calls of the deed, as would if possible satisfy each.

Law vs. Hempstead, 10 Conn., 29.

The proof shows that extending the line of Reed street as far as the Higuera or Pala Rancho, for the northern boundary of the land described in the deed from Chaboya to Jones and Eldredge, and adopting the west line of the Higuera or Pala and the Yerba Buena ranchos, as the eastern boundary, the description of the deed would not include any part of the lot in question, p. 56.

It was shown also that taking the southern line of Reed's Addition, extended to the Higuera (Pala) rancho, as the north boundary line called for by said deed, and taking the line of the Higuera and Yerba Buena ranchos for the eastern boundary, no part of the lot in question would be included by the calls of the deed.

These instructions last referred to, completely nullified the sixth instruction asked by defendants,

and given by the Court, p. 95, and evidently controlled the jury in finding a verdict.

V.

The documentary evidence introduced by the defendants to prove title in themselves, derived from the Mayor and Common Council of San Jose, was relevant, and should not have been stricken out.

It was admitted that the tract of land shown by said documents to have been confirmed to the Mayor and Common Council of San Jose, include the premises in controversy. p. 71.

It was further admitted that whatever title the City of San Jose had in the five hundred acre lot number six, under the proceedings had in the Federal Courts given in evidence by defendants, is in the defendants in this case. p. 85.

The ground of their exclusion was, that the decree expressly excepts all lands confirmed by the United States Courts.

The final decree confirming to the Mayor and Common Council of San Jose the Pueblo lands of the former Pueblo of that name, establishes the validity of that claim, and ascertains that it was a right which had "accrued before the duty of the

government and its rights under the treaty (of Guadalupe Hidalgo) attached." It is a recognition by the government of the title of the city to the land described in the decree, except those parcels included within the reservation.

The Court below, in excluding the decree of confirmation of the Pueblo lands, did so upon the ground that the 500 acre lot in question is within the reservation, and therefore excluded from the confirmation. This was in effect deciding that the confirmation of that lot to Pedro Chaboya was conclusive upon the city, of title in him, and that the city was not a third person within the meaning of the act of March 3d, 1851.

The language of the reservation is, after naming certain ranchos, "and also such other parcels of land as have been by grants from lawful authority vested in private proprietorship, *and* have been finally confirmed to parties claiming under said *grants* by the tribunals of the United States, or shall hereafter be finally confirmed," etc. p. 83.

To bring a confirmation within the exceptions, it must be of a parcel of land which has been by grant from lawful authority vested in private proprietorship, and has been finally confirmed to parties claiming under such grant by the tribunals of the United States. In other words it must be a

confirmation founded upon a grant from lawful authority; a mere confirmation does not bring a claim within the reservation, and exclude it from the confirmation to the city.

It was therefore competent for defendants to show the confirmation, to their grantor the Mayor and Common Council of San Jose, and to show thereby that their title was paramount and superior to that of the plaintiffs.

The case of Lynch vs. Bernal, 9 Wal. 315, is relied upon by plaintiffs, and was held by the Supreme Court of California to be an authority against this proposition. An examination of that case will show that it is not. The confirmation in that case, was of a grant made by the Mexican authorities of California, and held adversely to the town of San Francisco. The plaintiff in error, who was the defendant below, claimed title under the confirmation to the city of San Francisco, of its Pueblo lands, and insisted that as the tract of land confirmed to the defendant in error, was within the limits of the Pueblo of San Francisco, the Land Commission and the Federal Courts had no jurisdiction to confirm the grant under which the defendants in error claimed, but that it should have been presented in the name of the Municipality, pursuant to the provisions of section 14 of

the act of March 3d, 1851. 9. Stat. at Large, p. 631.

This Court held that the section referred to, had no application to lots held adversely to the corporation or town by independent titles, and that the claim was therefore properly within the jurisdiction of the Land Commission, and as it had jurisdiction, its decree however erroneous, could not be collaterally assailed. In this case, the confirmation is not of a claim held adversely to the town of San Jose, but is a claim under the town, and as that fact appears from the decree, the want of jurisdiction is apparent, and the decree is subject to collateral attack.

It clearly appears from the records that the confirmation to Chaboya was not founded upon any grant from the Mexican government, or upon any equities arising from a long continued possession by permission thereof. In deciding upon Chaboya's appeal, this court says: "There is no pretence that there was ever any grant of the land by the Mexican government"

2 Black, R. 595.

And at page 597, it says: "Notwithstanding the report of the Prefect Castro, that the claimants ought to be excused from the usual procedure, by which we suppose he meant, the procuring of an informe that the land was vacant, the governor did not issue a grant."

"His claim or right to the possession stood, then, in the same condition of dispute as between himself and the Pobladores of San Jose, that it had previously

when on the 29th of February, 1840, he entered into what may be termed a compromise with them, which is endorsed by the foregoing papers, signed by himself and the Justice of the Peace of that Pueblo. We can give to this paper no other construction than a renunciation by Chaboya of any right to the possession of La Posa de San Juan Bantesta, and a consent to occupy it for two years under the authorities of the Pueblo, paying them six dollars annual rent, and submitting to terms which they chose to impose, to prevent him from acquiring any permanent possession or interest in the land."

This court, in the most emphatic language, declared that Chaboya had neither a grant nor any equities which entitled him to hold the land as against the Pueblo.

The decree of the District Court confirming the 500 acre lot, must have been based upon the supposed concession by the Pueblo, which was absolutely void, and the decree of this court was affirmed here, only because no appeal was taken, except by Chaboya.

In striking out the documentary evidence introduced by defendants to prove title in themselves, the court below virtually denied them the right to prove a title superior to that claimed by plaintiffs. That testimony tended to prove the title set up by defendants. There can be no question of the relevancy of the documentary testimony stricken out, the only question was its effect as evidence, whether it was sufficient or insufficient to prove a paramount title in defendants, there being nothing on the face of the

decree confirming the claim of the City of San Jose, showing that the lands in question are excepted from confirmation thereby. Whether the lands in question were within or without the exception, not appearing from the face of the decree, the fact that they were or were not depended upon proofs outside of the decree. The tract in controversey is not within the specific exceptions, and it is submitted is not within the further exception, because it is not a confirmation of a grant, but of a town lot, held under and in subordination to the town, not in fee, but for a limited term long since expired, and not in any sense adversely to the town.

To hold that any confirmation within the limits of the tract confirmed to the city, is conclusive of title in the confirmee, is to deny to the city the right specially reserved to it by the 15th Section of the Act of March 3d, 1851.

It is respectfully submitted that the court below erred in excluding the record of the Pueblo title, and also in charging the jury, p. 93, that: "This decree of confirmation of the claim of Pedro Chaboya vested in him title to the lot, and as the confirmation related back to the date of his petition to the United States Board of Land Commissioners, he was, by virtue of it, seized in fee of the lot in December, 1850."

S. O. HOUGHTON,
JOHN REYNOLDS,
for Defendants.

IN THE

Supreme Court of the United States.

PEDRO CHABOYA ET AL.,
Plaintiffs in Error,
vs.
DAVID UMBARGER ET AL.,
Defendants in Error.

No. 158.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF CASE.

This suit was instituted in the proper District Court of California, by the defendants in error, to recover of the plaintiffs in error, a certain tract of land, situate near the City of San José, in the County of Santa Clara, in said State, and designated upon the map of the pueblo lands of said City of San José as lot 6 east of the base line.

The important facts were stipulated by the parties.

(See stipulation, pr. rec. pp. 6–23.)

The defendants in error, plaintiffs in the *nisi prius* Court, relied for recovery, upon a decree of the United States District Court for California, passed on the sixth of November, eighteen hundred and sixty-two, confirming the land in controversy, to Pedro Chaboya, one of the plaintiffs in error, (pr. rec. p. 21), which decree was affirmed by this Court, at the December term, 1862.

See Mandate (pr. rec. p. 22), and the decree (ib. p. 24.)

The defendants in error connected themselves with this confirmation, by conveyance from Pedro Chaboya to certain parties, from whom they deraigned.

(Pr. rec. pp. 25–8.)

Pedro Chaboya now alleges, that this confirmation to himself, is invalid, and that this deed from himself passed no title to the premises in dispute. In this assertion the other plaintiffs in error, the sons and daughters of Pedro, unite.

The confirmation was obtained in the manner following:

Pedro Chaboya had, for many years prior to the cession of California to the United States, resided upon a tract of land called "La Posa de San Juan Bautista," which embraces the disputed premises.

On the 2nd of March, 1853, he presented a petition to the Board of Commissioners, authorized by Congress to ascertain and settle private land claims in California, in which he prayed a confirmation of a tract of land, which he described as having been in his possession since 1840. The boundaries of the land were incorrectly described in this petition, and did not include the lands which Pedro Chaboya intended to claim, but on the contrary, embraced a tract of land of which the claimant had never been possessed, and to which he had attempted at one time to obtain a title, but in which endeavor he had failed.

The manner in which this mistake in description arose, is shown by sections 9 and 10 of the stipulation. (Pr. rec. pp. 12–13.)

On the 24th of October, 1854, the Commissioners rejected the claim. (Stipulation, sec. 4, pr. rec. p. 11.)

From this decision of the Commissioners the claimant appealed to the District Court. (Pr. rec. p. 11.)

Whilst this appeal was pending, on the 15th of June, 1857, the District Court, so far as was in its power so to do, permitted the mistake in the petition of Chaboya to be corrected. (Section 9–10, pr. rec. pp. 12–14.)

The District Court, on the 29th of August, 1861, affirmed the Decree of the Commissioners, and dismissed the claim-

ant's petition for want of jurisdiction. This decree was afterwards affirmed by this court.

(Stipulation, sections 19 and 20, pr. rec. pp. 19–20.)

On the 25th of April, 1862, an Act was passed by Congress, and approved by the President, authorizing the District Court to hear and determine upon its merits, the claim of Pedro Chaboya, to the tract of land called La Posa de San Juan Bautista, described in his amended petition of the 17th of June, 1857.

(Stipulation. section 21, pr. rec. p. 20.)

Under this Act, the District Court proceeded to hear the case, and on the sixth of November, 1862, confirmed that portion of the land claimed, which is in dispute in this case, and rejected his title to the residue. From this decree both parties appealed.

(Stipulation, section 23, pr. rec. p. 21.)

At the December term of this Court, this decree was affirmed. (Pr. rec. p. 22.)

From this title the defendants in error deraigned, and upon it rested their case.

The plaintiffs in error, to meet this case, offered in evidence a decree of the District Court, entered on the 13th of June, 1866, in pursuance of a mandate of this Court, ordered at its December term, 1865, confirming certain lands to the City of San José, (pr. rec. pp. 83–85), and which decree it was contended by plaintiffs in error, embraced the premises in dispute, and confirmed the same to the City; it being admitted (rec. 85) that whatever title the City had in the premises was vested in the plaintiffs in error.

The *nisi prius* Court excluded this decree from the jury, because it appeared from the face thereof, that there were excepted from its operation, certain parcels of land mentioned by name, and all "*such other parcels as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter*

be finally confirmed to parties claiming thereunder by said tribunals in proceedings pending therein for that purpose," and "which excepted parcels of land were excluded from the confirmation."

(See Decree, rec. p. 85.)

This ruling was upheld by the Supreme Court of the State, (Op. rec. 103–105), and is now assigned as error, and raises, we submit, the only federal question, in the record.

The other facts arising in the case relate solely to the effect of the deed from Pedro Chaboya, in transferring his title to the grantors of the defendants in error, and do not involve any federal question, and therefore a statement of those facts is unnecessary.

The matter, however, is very succinctly stated in the third section of the opinion of Mr. Chief Justice Wallace, found at page 106 of the printed record.

Points of Law.

The decree of confirmation to Pedro Chaboya, was valid, and passed the title to the lands therein confirmed. It matters not, that the District Court, and this Court took cognizance of the case, under the special Act of April 25, 1862.

The subject was of a political nature, and Congress had ample power, to authorize by special or general law, any tribunals it might deem proper, to hear and pass upon the case.

Foster et al. v. *Neilson*, 2 Peters, 314;
Beard v. *Federy*, 3 Wallace, 492;
West v. *Cochran*, 17 How. 414.

The claim of Chaboya, was based upon the provisional grant from Governor Alvarado, of date May 10th, 1839, (pr. rec. p. 10), and the order of the 22nd of the same month, by the Prefect José Castro, (pr. rec. 18), followed by uninterrupted possession of the premises. It was upon this showing that the claim to a small part of the rancho, was adjudged to be valid.

A claim was upon like evidence confirmed by this Court in *United States* v. *Alviso*, 23 Howard, 318.

But it matters not, upon what evidence or title the decree, was entered, it is now conclusive upon the claimant, and upon all other persons not holding a title upon which the government itself might be challenged.

Lynch v. *Bernal*, 9 Wallace, 320.

"It is sufficient that the right, or title is derived from the "Spanish or Mexican Government, and it may in some "instances rest in the general law of the land, as is the case "usually with the title of municipal bodies, under the Span-"ish and Mexican systems, to their common lands.

"The board having acquired jurisdiction, the validity of "the claim presented, and whether it was entitled to con-"firmation, were matters for it to determine, and its decision, "however erroneous, cannot be collaterally assailed on "the ground that it was rendered upon insufficient evidence.

" The rule which applies to the judgments of other inferior " tribunals applies here—that when it has once acquired " jurisdiction its subsequent proceedings cannot be collat- " terally questioned for mere error or irregularity."

Beard v. *Federy*, 3 Wallace, 489.

Nor does the fact that the decree describes the land confirmed, as " the same five hundred acres allotted to Pedro " Chaboya by the authorities of San José," differ the case. This reference was only intended to indicate the precise parcel of land confirmed.

See op. of Court below, original record, p. 253.

II.

That the the land confirmed to Pedro Chaboya, was excepted, from the lands confirmed to the City of San Jose, and that therefore. the decree in favor of the City, was irrelevant, and was properly excluded, is not an open question.

The language of the exception, is copied in precise terms, from the decree of confirmation of the lands of the City of San Francisco, by the Circuit Court of the United States.

The language of that exception is set forth in *Lynch* v. *Bernal*, 9 Wallace, 319.

In construing the exception in that case this Court says:

" Now when the final decree upon the claim was made, " there were excepted from the tract confirmed such parcels " of land as had been, by grants from lawful authority, " vested in private proprietorship and had been finally con- " firmed to parties claiming under said grants by the tribu- " nals of the United States, or should thereafter be finally " confirmed to parties claiming thereunder, by said tribunals " in proceedings then pending therein for that purpose. This " exception is not limited to parcels of land claimed under " perfect grants, as contended by counsel, but includes all " parcels claimed by private parties under grants from the " authorities of the former government, the claims to which " had been subjected, or might in proceedings then pend-

"ing, be subjected to the examination of the tribunals of "the United States, and had been, or might be confirmed "by them.

"The object of the exception was to prevent any possible "controversy between parties claiming under the City, and "parties holding under grants adjudged valid by the tribu- "nals of the United States, and to protect the latter from "being harassed by further litigation respecting their titles. "By the language, 'such parcels of land as have been by "lawful authority vested in private proprietorship,' no "more is meant than 'parcels of land which have been "granted by lawful authority to private parties.'

"The exception excludes, therefore, from confirmation to "the City the land granted to Bernal, and the Van Ness "ordinance did not operate to pass any right or interest in "the demanded premises to the party through whom the "defendants claim." (Ib. 324.)

III.

The only questions remaining, relate to the efficacy of the deed from Pedro Chaboya to Jones and Eldridge, to translate his title to the premises in dispute.

This deed is for the "northeast half league of the land or "rancho of the said Pedro Chaboya." (Pr. rec. p. 25.)

The land is made to abut upon the lands of Antonio Chaboya on the east.

To establish the location of the lands of said Antonio Chaboya, the defendants in error, offered a patent, issued to him for his rancho, which patent was based upon a confirmed Mexican grant. (Pr. rec. pp. 31–37.)

The plaintiffs in error offered to show, that the title papers, upon which the grant to Antonio Chaboya had been confirmed, were forged, and that the west boundary of his lands, as established by the patent to him, were incorrectly located by the Government.

The *nisi prius* Court, upon objection, excluded this evi-

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The *nisi prius* Court, upon objection, excluded this evi-

dence, (pr. rec. 89), and the ruling was upheld on appeal. (See 3d Sec. of opinion of Mr. Chief Justice Wallace, pr. rec. 106.)

The questions here considered, and the other exceptions upon this deed, are not federal questions.

Their solution depends not upon the decree of this Court confirming Pedro Chaboya's claim, but upon the construction, to be placed upon his deed to Jones and Eldridge, and the judgment of the Courts of the State, upon that subject, will not be reviewed in this Court.

Hoadley v. *San Francisco*, 94 U. S. 4;
McManus v. *O'Sullivan*, 91 Ib. 578;
Romie et al. v. *Casanova*, Ib. 379;
Murdoch v. *City of Memphis*, 20 Wallace, 590.

Respectfully submitted.

WM. MATTHEWS,
Counsel for Def'ts in error.

IN THE

Supreme Court of the United States.

CHABOYA ET AL., PLAINTIFFS IN ERROR,

vs.

UMBARGER ET AL., DEFENDANTS IN ERROR.

Reply to Brief of Plaintiffs in Error.

The learned counsel of Plaintiffs in Error is mistaken in asserting that Pedro Chaboya produced no grant for the premises in dispute, in support of his petition of the 2d of March, 1853.

Section 3 of the stipulation offered at the trial (Record, p. 10, folios 20 and 21) shows a provisional grant by the Governor, of date May 10th, 1839, and a recital by the prefect, José Castro, of date 25th of the same month and year, that "the petitioner ought to be excused from the usual procedure, since the prefecture in my charge has already taken and perhaps dispatched it conformable to his solicitation, &c."

This was a more formal grant than the grant of Alviso, confirmed in 20th Howard, 318, (Record in case of U. S. vs. Alviso, December Term, 1859, pages 9 and 10,) or than the arpent grants on which the title of the most of the lands of St. Louis depends.

The special Act of Congress provided that the testimony already in the record, with any further testimony that parties might offer, should be considered upon the hearing.—(Record, p. 20.)